No. 14540

United States
Court of Appeals
for the Ninth Circuit

BOEING AIRPLANE COMPANY, a corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record

In Two Volumes

VOLUME II.

(Pages 263 to 553, inclusive)

Petition for Review and Petition to Enforce Order of the National Labor Relations Board

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, California—1-6-55

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(Testimony of Edward McElroy Gardiner.)

Q. Is this the report?

A. I believe that is.

Q. Following that ballot what further action did the Executive Committee take in regard to the MAC?

Mr. Perkins: Just to clarify the records, is this the ballot that we are talking about now with respect to which certain results were testified to earlier as to number of votes and percentage of votes?

Trial Examiner Miller: I so understood by the reference of General Counsel.

Mr. Perkins: I just wanted to tie this part of the record to that part of the record.

Q. (By Mr. Weil): Mr. Gardiner, will you answer my question? Can you recall it?

A. I would prefer to have it repeated just to make sure.

Q. To save going back, I will rephrase it. Did the Executive Committee take any further action regarding MAC after the ballot was submitted and the returns came in? A. Yes.

Q. What was the form of that action? [99]

A. The Executive Committee considered the ballot as a true ballot of the membership and, therefore, requested that the Action Committee carry out a further study and make reports to them, make reports to the Executive Committee, concerning a finalization of plans for such action, and also advise that, due to the nature of the negotiations at that particular time, to take no overt action which would in any way cause harm to these negotiations to SPEEA or to the Boeing Airplane Company. At the same time the Executive Committee re-

(Testimony of Edward McElroy Gardiner.)

quested a negotiating meeting with the Industrial Relations Division of Boeing Airplane Company and advised them at that particular meeting of the results of the MAC poll. And at that particular meeting the Negotiating Committee expressed its concern over the results of this poll, in view of its seriousness, both to SPEEA and to the company, and told them, told the company in this particular case that whereas we felt at that particular time that the company and SPEEA were negotiating in good faith in their efforts to reach a mutual understanding, that the Executive Committee was acting under its authority to take no action on this particular conference for four weeks.

Q. (By Mr. Perkins): By that you meant the Manpower Availability Conference?

A. Yes.

Q. (By Mr. Weil): Is this the four weeks moratorium?

A. Yes. The statement was not made that it would be only four [100] weeks, the statement was made that it would be at least four weeks.

Q. Could you tell me preliminarily does membership vary greatly from month to month in SPEEA?

A. Yes. There is an annual trend which tends to increase to a maximum somewhat prior to the signing of a contract and final determination of a contract. In addition, the membership of SPEEA has been continually expanding during the last few years.

Q. As a member of the Executive Committee, as

(Testimony of Edward McElroy Gardiner.)

the Chairman of the Executive Committee, is the knowledge of the membership figures one of your functions?

A. No. We do have access to the data and I believe in this particular case it might be wise to state that at the time the MAC poll was held, I believe the membership to be on the order of thirteen to fourteen hundred rather than the figure previously mentioned. However, this is a matter of record and could be checked. Its only purpose is to indicate the percentage of the entire membership and the percentage of the group we represent in considering the importance of the ballot held on the MAC.

Q. Does SPEEA represent employees of any other company other than Boeing?

A. Yes. Continental Can Corporation Division located in Seattle.

Q. Has SPEEA represented employees of any other companies other than Boeing and Continental Can in the past?

A. Yes. We do not now act under any contract, however, and [101] have not for the last several years with any of the other companies, G. E., X-ray, and once again, if my memory serves me, Issacson Steel—it doesn't sound quite right to me. I would have to check on that.

Q. Was the Manpower Availability Conference designed to include only those members of SPEEA who worked for Boeing?

A. The Manpower Availability Conference in

(Testimony of Edward McElroy Gardiner.)

the opinion of the Executive Committee had three or four purposes.

Q. What were those purposes?

A. We felt it imperative that data be available to ourselves and to the company as to the degree of difference between the rate for engineers to be given at experienced level and the rates now paid by Boeing, or at that particular time paid by Boeing. Inasmuch as negotiations between engineers and employers at the time of hiring is an individual affair, both we and Boeing had found difficulty in getting together as to the degree of this difference between going rates and Boeing rates. It was felt that a——

Mr. Perkins (interrupting): I beg your pardon. Are we getting into this area that we discussed earlier in this proceeding as to the respective objective merits of the offers of both parties and the monetary positions taken respectively by the parties in negotiating? If so, I would like to——

Trial Examiner Miller (interrupting). I wouldn't so interpret the testimony. I assumed that Mr. Gardiner is now giving us [102] his recapitulation of the thinking of the Executive Committee as to the purpose and need for the Manpower Availability Conference as a pressure tactic.

Mr. Perkins: I will withdraw my objection.

A. (Continuing) Recapitulating my discussion up to that point, the first was to obtain data concerning the market value of engineers for bargaining purposes. Secondarily, the purpose is to provide needed employment opportunities for those

(Testimony of Edward McElroy Gardiner.)

engineers who had indicated to us their strong desire to leave the company, no matter what occurred. In other words, to that extent we found that SPEEA could be of service to engineers whether within the framework of negotiation or during periods outside of that. Thirdly, we felt that the actions taken through the MAC would serve to eliminate the situation of the engineers at Boeing and the conditions that we felt were important, this elimination to occur throughout the country. This third purpose was to serve as a form of pressure on the company.

Q. (By Mr. Weil): To get back to my prior question, which I think you have partially answered, was the conference designed to aid engineers, or designed to interview engineers other than members of SPEEA, other than employees of Boeing Airplane Corporation?

A. In its expanded version it could. However, in this particular case we limited participation in the Manpower Availability Conference as intended only to members of Boeing, the reason [103] being that it was not clear in our mind yet whether the activities of the Manpower Availability Conference were in strict accordance with the contract which we had at that time with Continental Can, they being the other members of SPEEA, and it was felt wise and prudent for us not to allow them to be included until we were sure of that particular point. At that time we had no contract with Boeing Airplane Company but did with Continental Can.

Q. Can you tell us to what extent the Executive

(Testimony of Edward McElroy Gardiner.)
Committee actually controlled the working out of the plan for the MAC?

A. Well, it would depend upon the version of the—the Action Committee would say it is complete control, and the Executive Committee would say that it is merely a restraining control. But in this particular case, the activities considered were conceived and built up by the members of the Action Committee. They in turn reported to a liaison officer of the Executive Committee. And perhaps this wouldn't be a digression to say that in the Executive Committee all standing committees report to at least one of the Executive Committee. We call that particular member the liaison officer. And, therefore, monitoring an approval of actions to be taken of each committee rests with the Executive Committee.

Q. As Chairman of the Executive Committee, you have already indicated as Chairman you were a member of the bargaining team. As Chairman also was it your duty to initiate the bargaining [104] with the respondent? In other words, to open the contract?

A. We had that opportunity and we took advantage of it. That is the—say that either member can at the prescribed time request continuation of the contract or——

Q. (By Mr. Tillman—interrupting): By "member" you mean party?

A. Yes, either Boeing Airplane Company or SPEEA. And this initiation was made by SPEEA

(Testimony of Edward McElroy Gardiner.)

at the start of the last negotiations on April 2, 1952.

Mr. Weil: May we go off the record?

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Q. (By Mr. Weil): I believe, Mr. Gardiner, you testified that by letter of April 2 you opened the contract, and did you subsequently go into negotiation with the company? A. We did.

Q. When did those negotiating meetings start?

A. I believe it was between April 7th and 10th. I think there is a little conflict on the date on that and I hope it is immaterial.

Q. I believe it is. Did SPEEA make any proposal at the opening of negotiations?

Mr. Perkins: Objection on the grounds I have already stated, Mr. Examiner.

Trial Examiner Miller: Objection overruled.

A. SPEEA did make proposals and——

Q. (By Mr. Weil—interrupting): When did SPEEA make its first proposal?

Mr. Perkins: That is objected to on the ground that it is outside of the issues, immaterial and irrelevant.

Trial Examining Miller: You may have a continuing objection, if you wish, to the entire line of examination relating to the negotiations beginning with the first meeting and carrying on to the negotiations up to January 27.

Mr. Perkins: I was about to suggest that.

Trial Examiner Miller: To the extent that that

(Testimony of Edward McElroy Gardiner.)

continuing objection is grounded on the particular basis of objection previously stated, the objection is overruled.

Should particular questions within the line merit other objections from the respondent company's point of view, you may press other such objections on other grounds.

A. In this particular case for all meetings that were held minutes were immediately made which were approved by the Executive Committee within a few hours following that particular negotiation meeting. These were distributed throughout the membership as area news releases and as such I believe should be considered as matters of record, at least in the understanding of the Executive Committee of SPEEA.

Q. (By Mr. Weil): Who prepared those minutes?

A. They were prepared by the Executive Committee.

Q. By all members of the Committee? [106]

A. Yes. It was done at a session immediately following its negotiation. These were prepared from notes taken by a scribe at the meeting.

Q. Is that an example of such releases?

Trial Examiner Miller: Let the record show that counsel for General Counsel has submitted for the witness's inspection a folder of hectographed documents.

A. Looking these over very briefly——

Mr. Perkins (interrupting): Is respondent to understand that now the Trial Examiner has opened

this hearing for the complete history of bargaining, for the complete bargaining records dating back to the opening of the contract and is regarding the issues in this case broadened to include an allegation with respect to Section 8 (a) (5) with respect to the entire period?

I would like to clear my mind as to what we are dealing with here.

Trial Examiner Miller: As I recall our discussion earlier today, it was to the effect that the General Counsel declared his position in substance as follows: That the negotiations followed a certain course which he expected to bring out in the record; that the General Counsel took no position with respect to whether or not the course of negotiations evidenced bad faith or good faith, but that whatever the evidence might show as to the course of those negotiations for purposes of presenting his case the General Counsel was contending that bad faith was [107] injected into the situation by discharge of Mr. Pearson.

Do I correctly recapitulate at this time the General Counsel's position?

Mr. Weil: Correct.

Trial Examiner Miller: In view of Mr. Perkins' objection at this time, or observation at this time, and in view of my own observation of the bulk of the documents that the witness has been asked to examine, I am going to inquire at this time, Mr. Weil, what your intention is with respect to the exploration of this subject-matter, granting that the General Counsel, as I understand it, does not

expect to make a contention that bad faith was shown in the course of these negotiations? To what extent do you expect to go into them?

Mr. Weil: Not to any great extent at all. I just expect to go into the matters of general course of bargaining, not the specific bargaining at each meeting.

You speak of the bulk of these. These are the letters from the first negotiating meeting up till March 1953. They cover almost a year. They are by no means lengthy. Each sheet I believe is one meeting, and some of the sheets are pretty short. I intend to go only into this only as a matter of background and as a matter of background not too fully. I wish to show, in other words, that offers were made, that counter-offers were made, and so forth, but I don't intend to show that on such and such a day a discussion was had concerning the [108] punching of time clocks by certain engineers or anything like that.

Trial Examiner Miller: I confess, Mr. Weil, that I am in some doubt at the present time as to just exactly what we may be opening up. If this matter is explored to any extent at all, granted that General Counsel's intention may be to more or less skim the surface and indicate the course of negotiations in general outline, may we not by this procedure open up, and properly so, for rebuttal evidence by the respondent the question of whether or not the negotiations as represented to the membership by the Executive Committee of SPEEA actually followed the indicated course?

In other words, may we not be involved in extensive litigation as to whether or not a report that was given at a given time is a correct report, when as a matter of fact, in terms of the issues the correctness of the report is immaterial.

Mr. Weil: I believe I can eliminate that possibility by using, if the company so wills, the company's own report on these negotiations. The things that I had planned to cover are not of the nature, of such a nature that there is any difference of opinion as to what took place. I don't plan to put these in evidence, for instance. I plan to use them only to jog the memory of the witness.

There were some 30 meetings, I believe, somewhere around 30 meetings, and for him to be able to sort out at what meeting and [109] at what time such and such a thing took place is rather difficult. That is the only reason I brought these to his attention.

Trial Examiner Miller: In the course of the earlier discussion, Mr. Perkins, I indicated that I was disposed to permit the General Counsel to adduce certain material with respect to the general course of negotiations by way of background on the basis of his representations that the theory of the General Counsel's case and the issues posed by the complaint did not involve any allegations of bad faith in the course of those earlier negotiations prior to January 27, and that their presence in our record would be only for the purpose of providing background with respect to the particular issues posed.

In view of the way the record has developed up to this point, I have undertaken to clarify my own understanding with respect to the General Counsel's intention, and as of the moment I think I have reached a determination as to what would be the appropriate course to follow, but I have not as yet heard from you.

Do you have anything to observe with respect to Mr. Weil's statement as to his intentions, and any statement to make on behalf of the respondent company in the light of the colloquy in which we have been engaging?

Mr. Perkins: My first comment is that his comments are not clear to me, and I have this in mind, that there is no discovery procedure as such available to litigants in Board cases. That [110] is essentially the basis for the rule of a certain school of thought among federal courts, federal district courts, particularly. Now, a complaint need be very sketchy, and that it is not a proper contention on the part of either party that the complaint does not contain allegations sufficient, or the answer, to permit a proper and thorough preparation of the case. The complaint here certainly does not do that. If this hearing is to be expanded to the depth that one might interpret from Mr. Weil's remarks—however, my first comment still holds. I think that the only way that this can be reached is to have a statement made by General Counsel as to what the intent is here. What act is it in the interval between the opening of the contract and the discharge of Mr.

Pearson which is featured in the complaint or acts, are claimed to color this in some way?

Is it the contention that the behavior of the respondent in some way brought up the point of Mr. Pearson's discharge, and then depending upon whether he was or was not engaged in protected, concerted activity, either, then it becomes black or white?

It just leaves us in a situation where it is difficult to know exactly how to answer the Trial Examiner at this stage of the proceedings.

Mr. Tillman: Mr. Examiner, as it stands now the complaint only alleges an 8 (a) (5) from January 27, 1953, and, therefore, we are not asking, and you probably would not find an 8 (a) (5) proceeding from that particular date, even if it should appear [111] in the record unless and until such time as we should amend the complaint. I think the issue is very clear. We are only alleging an 8 (a) (5) after January 27, 1953.

Trial Examiner Miller: My question then still remains. If an 8 (a) (5) is only alleged on and after January 27, 1953, to what extent are we opening up this record to extensive litigation of background material?

Mr. Tillman: Part of that paragraph nine indicates, alleges that the discharge of Pearson was for the purpose of restraining the union's economic action to break that bargaining impasse then in existence.

As I understand our purpose here is to connect up certain phases of the bargaining with the action

taken by SPEEA to counter or to get out of the impasse.

Trial Examiner Miller: In other words, if I understand you correctly, the purpose of this line would be to lay the basis to a foundation that an impasse had been reached.

Mr. Tillman: We conceded as to the impasse, but the nature of it——

Mr. Perkins (interrupting): We have admitted it.

Mr. Tillman: But the nature of it does not appear from either the complaint or the answer.

Trial Examiner Miller: I am going to permit the examination subject to motion to strike at the completion of the line, at which time I will reconsider the whole question. [112]

Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

At this time, as a result of discussion off the record with respect to the nature of the proof which the General Counsel expected to adduce, and the prospects for the further continuation of the hearing, we will recess until 9:30 a.m. tomorrow morning at the same place.

(Whereupon, at 5:45 o'clock, p.m., Tuesday, June 23, 1953, the hearing was adjourned until tomorrow, Wednesday, June 24, 1953, at 9:30 o'clock, a.m.) [113]

Trial Examiner Miller: The hearing will be in order.

Since the hearing recessed yesterday I have given some additional thought to the issues we were con-

sidering at the close of yesterday's session. I am, of course, interested in avoiding any unnecessary extension of the hearing and any unnecessary elaboration of the record and to that extent, to that end, rather, I would like to recapitulate for the record at this time the present status of the question now in issue as I see it with respect to the materiality of the line of examination which Mr. Weil sought to open up in his examination of Mr. Gardiner. I do this in an effort to determine whether such differences as the record reveals between the parties may be eliminated or avoided. Also in such recapitulation of the discussion as I may indulge in it should be understood that I am not giving a chronological narrative of what was said, but my over-all impression of the final position of the parties.

As I understand it, the problem came up originally when the respondent raised a question as to the course of conduct challenged by the complaint as indicative of bad faith bargaining. Specifically, the question was raised as to whether any allegation was intended that the negotiations in 1952-53, up to January 27, approximately, were conducted in bad faith. In response to this question the General Counsel's representative stated in substance, as I recall it, that no allegation of bad faith was [116] intended with respect to the negotiations in 1952 and '53 up to the discharge of Mr. Pearson. It was contended, however, that the discharge of Pearson tainted the situation as it then stood and injected bad faith into the negotiations, and that the subsequent increase in wages under all the circumstances ought to be

considered an additional instance of bad faith bargaining. The respondent then raised the question as to why the history of the 1952-53 negotiations had to be developed in the record if no contention was made that they were conducted in bad faith. If I interpreted Mr. Perkins' remark correctly, there was an indication that if the actual negotiations were spread on the record the respondent company would be called to develop these negotiations fully in order to protect itself against, one, a latent charge of bad faith during the '52-'53 negotiations which was possibly implicit in the present complaint, and, secondly, a possible amendment of the complaint to allege bad faith during the 1952-53 negotiations.

The General Counsel's representatives then denied any intention in the present complaint to charge bad faith in regard to the 1952-53 negotiations, and if I interpreted Mr. Tillman's remarks correctly, he stated in substance that after an amendment of the complaint to include such a charge expressly, the General Counsel only intended to spread part of the 1952-53 negotiation's history on the record to show the nature of the admitted impasse reached in the negotiations. And it was indicated that there was [117] an intent to adduce this much only as background.

Mr. Weil also in the course of the discussion indicated that the course of the negotiations would not be factually in dispute since the General Counsel was willing to rely on the notes of either party as to what actually occurred. The respondent, in

substance, raised the question as to why it was even needed as background material.

In view of the respondent's admission of the fact that an impasse had been reached at this point, in effect, I accepted the General Counsel's statement that the complaint as presently limited appeared to raise no issues of good faith or bad faith with respect to the 1952-53 negotiations prior to the January 27 discharge of Pearson. I, therefore, ruled that the General Counsel would be free to spread this history of the 1952-53 negotiations on the record to whatever extent it was deemed necessary as background to reveal the nature of bargaining impasse. This was done on the basis of my understanding of the General Counsel's contention. As I understood it, the General Counsel's contention is that a factual finding as to the nature of bargaining impasse is a necessary condition precedent to any evaluation of the respondent's conduct in contention with the discharge of Pearson and the subsequent developments. In other words, the contention appears to be that because the bargaining impasse developed in the way that it did, and because the bargaining impasse developed on the subject that it did, the respondent's conduct [118] on or after January 27, must be considered evidence of bad faith, and must be characterized as a course of conduct involving unfair labor practices.

The effect of my ruling was to permit the General Counsel to proceed subject to a motion to strike if I later concluded that the factual finding to which I have referred would be immaterial, that is, not

required for any evaluation of the respondent's subsequent conduct. In my thinking the matter over during the interval since yesterday, I find some reason, at least, to doubt the wisdom of my disposition of the problem, and I would like to pose several questions at this time in order to clarify the record and clarify my own thinking on the matter.

First of all, one preliminary observation as to this matter of background evidence, specifically, the basis on which background evidence in Board proceedings is admitted is generally regarded as admissible, and, if admitted at all, as I understand it, background evidence is admitted on the basis of a claim of relevancy and materiality. Well, then, the question arises as to how the background of any challenged course of conduct can be relevant and material in a determination as to propriety of the challenge.

Mr. Perkins: May I hear that again, please?

Trial Examiner Miller: The question is how can the background of any challenged course of conduct, specifically the background against which the discharge of Pearson and the wage increase [119] occurred, were relevant and material in a determination as to the propriety of the challenge in this case, the challenge to the discharge of Pearson and the wage increase. Certainly it can be relevant and material only if it is contended that a factual finding as to the background matters will affect the evaluation to be made of the challenged matters.

Now, the first question that occurred to me is this, why is a factual finding as to the nature of

the bargaining impasse needed to evaluate whether the discharge of Pearson envolved unfair labor practice. On that point I confess some difficulty, as I thought about the matter last night.

The second question is why is a factual finding as to the nature of bargaining impasse needed to evaluate whether the unilateral wage increase involved unfair labor practice. On this I had less difficulty, having in mind the language used by Justice Burton in the disposition of the Compton Highlands case which recapitulated much of the Board's thinking in this field. As I understand it, under the language used by Justice Burton in that decision the nature of a bargaining impasse is material in determining whether a subsequent wage increase involved unfair labor practices, and it was my knowledge with respect to the state of the Board's law and the decision of law in this field that impelled me originally to my ruling that the General Counsel should be permitted to proceed. With respect to the first question that I raised as to whether the factual finding as to [120] the nature of bargaining impasse is needed to evaluate whether the discharge of Pearson involved an unfair labor practice, do the General Counsel's representatives have any observations with respect to that issue that involves something that has escaped me so far?

Mr. Perkins: Before they answer, may I supplement my remarks on this subject of yesterday?

Trial Examiner Miller: Yes.

Mr. Perkins: It is not respondent's intention to object to the materiality or relevancy of any dis-

cussions in the negotiations bearing on the matters specifically mentioned in the complaint as follows:

The unilateral increase, the manpower availability conference——

Trial Examiner Miller (interrupting): Very well.

Mr. Perkins (continuing): ——the discharge of Mr. Pearson.

Trial Examiner Miller: Mr. Tillman, are you prepared to make any statement on the behalf of the General Counsel as to the basis on which a factual finding as to the nature of the bargaining impasse is relevant and material on the issue of the discharge of Mr. Pearson?

Mr. Tillman: May I consult Mr. Weil?

Trial Examiner Miller: Yes, sir.

Mr. Tiller: Mr. Examiner, it is the feeling of General Counsel that the nature of the impasse and the background of [121] negotiations is relevant to the contention that the activity engaged in by Mr. Pearson was a concerted action. Now, it is possible that one might view his activities in isolation as concerted, but in view of the fact that the company is contending that they were not concerted, but they were in effect in a nature not protected by the act, I don't see how a Trial Examiner or a Board or a Court can view his activities without seeing the entire background. In other words, the issue before you was, were his activities concerted, and, secondly, were they protected.

Trial Examiner Miller: I am glad to have your theory in that respect spelled out in that fashion.

Mr. Perkins: I would appreciate an elaboration

of that, if Mr. Tillman would be good enough to do so. First of all, as to the issue as to whether it is concerted activity, are you referring to concerted in the sense of concerted in the direction of the respondent here or are you referring to concerted in the sense of a collective activity of a group of employees as distinguished from the isolated act of an individual as such in an unidentified group of employees?

Mr. Tillman: Concerted, as I refer to it, I refer to Section 7 of the Act itself, which is a very broad definition. It may or may not be. First—Let me strike that. I would suppose, my understanding of concerted activity, it is not necessarily required that the activities be shown to be directed against any particular company, if the activity were performed in concert [122] and had as their purpose, as stated in Section 7, the purpose of collective bargaining or of a mutual aid or protection.

Trial Examiner Miller: I take it from Mr. Tillman's answer, Mr. Perkins, that he is using concerted as mentioned by you in your inquiry.

Mr. Perkins: Then I am at some loss as to the bearing that collective bargaining negotiations have on that point. It seems to me that the test of whether or not these activities were concerted is a description on the record of the activities themselves. If the essence of the definition is acting in concert, it seems to me that the evidence that is pertinent there is evidence of the type that has alrady been produced as to whether Mr. Pearson was acting in con-

cert with certain individuals identified in a specific group.

As to the development of the collective bargaining negotiations themselves, I am at a loss to see the pertinency of that point on this matter of the nature of the impasse. Perhaps I don't understand the full implication of the term. If there is an impasse, it seems to me that the issue with respect to that point as made becomes clear. What I have in mind is, that if there is a record of bargaining in bad faith on the part of the employer under 8 (a) (5) or on the part of the union under 8 (b) (3) and unilateral action is taken by the employer if it is an 8 (a) (5) or by the union under 8 (b) (3), then I do not see how it can be correctly regarded as an impasse, because there is no [123] impasse, if there has been no violations of 8 (a) (5) or 8 (b) (3) up to the point of impasse. The very essence of the definition of impasse, at least within my view, is that it means just what it says, an impasse. And an impasse in the eyes of the Board or within the purview of the statute here is not such, if there is some taint in the behavior of either or both of the parties preceding that.

Trial Examiner Miller: Just by way of general observation, I think that your observations, Mr. Perkins, raise a number of questions not directly related to our proceeding with respect to the whole philosophy with the Board's thinking in this field. The sense in which I believe Mr. Tillman used the word, certainly the sense in which I used the word, related only to this, an impasse in negotiations, as

I understand the law on the subject, may develop either because of the conduct of the parties leading one party or the other to feel that further negotiations are fruitless or would be fruitless, or a genuine difference to the subject matter irreconcilable by further discussion. And when I made my preliminary remarks, I spoke of the fact that an impasse may have developed here, I did not know as of the moment, I do not know as of this moment either, by way of the manner in which the negotiations were conducted or the subject matter of the discussion, and I had those two aspects of the problem in mind as possibly bearing on the nature of the impasse.

I take it on the basis of the Board's law on the subject, [124] as I understand it, that a genuine impasse can develop in negotiations which do not involve unfair labor practices or any taint of bad faith. By virtue of the fact that the negotiations have proceeded in a certain manner, or that there has been a genuine difference of opinion on the subject matter of the negotiations as reconcilable by further discussions, it more commonly arises in the latter type of case where there is a difference of opinion on the subject matter, and the sort of thing about which Justice Burton was talking in the Compton Highlands case was an irreconcilable difference on the subject matter of a wage increase. And that is what I had in mind when I said that my ruling permitting the General Counsel to proceed with their line was intended to permit him to develop that aspect of the case if it existed factually

here, that is, to develop whether or not there was an impasse on the wage issue, what the differences of opinion were, at a point where discussion ceased or came to a virtual standstill as to what the company then did.

Mr. Perkins: I would be willing to stipulate on that.

Trial Examiner Miller: That raises the question I was then coming to.

My ruling of yesterday was to the effect that General Counsel could proceed to adduce evidence and that I would then at the conclusion of the line entertain a motion to strike if I felt that the record as it *then should* revealed the line to be immaterial. I have come to the conclusion that that procedure [125] may be somewhat risky in terms of opening up our record for unnecessary elaboration and unnecessary litigation of the material that may not be factually in dispute, and I am wondering whether, for the General Counsel's purpose, in view of the facts and that Mr. Weil said yesterday that he would be willing to rely upon the respondent company's notes as well as the testimony of Mr. Gardiner, I am wondering whether a stipulation may not be possible. Would you like to explore that?

Mr. Tillman: A stipulation might be possible, to cover the negotiations, but it would not take care of explaining why SPEEA took a certain course of action in view of the parallel status of negotiations. And that was the main purpose, I mean that was the purpose of going into inquiry with Mr. Gardiner, to show that in an effort to negotiate SPEEA

took certain steps in connection with MAC. Mr. Weil was trying to indicate the status of negotiations, as Mr. Gardiner would testify, was probably not in dispute, but it is merely in explanation that SPEEA took certain action that it did.

Trial Examiner Miller: In other words, the General Counsel expects to adduce, if I understand you correctly, is in effect along this line, that as of a certain date negotiations had reached a particular point which Mr. Gardiner would describe and that SPEEA then did in the light of the situation as it then stood, SPEEA did so and so?

Mr. Tillman: That is correct. [126]

Mr. Weil: That is right.

Trial Examiner Miller: Very well, I will adhere to my original ruling.

EDWARD McELROY GARDINER

having been previously sworn, resumed the stand and testified further as follows:

Direct Examination—(Continuing)

Mr. Weil: Inasmuch as my last question, which was objected to, is buried pretty deep in the record I will restate it, and I will start that line of questioning over, with your permission.

Trial Examiner Miller: Surely.

Q. (By Mr. Weil): Would you give us as succinctly as possible the story of the course which negotiations took from the inception of negotiations after the letter of April 12, 1952, onward?

A. At the first meeting——

(Testimony of Edward McElroy Gardiner.)

Mr. Perkins (interrupting): My recollection is that there is a continuing objection on that.

Trial Examiner Miller: Yes, there is.

For the record the objection is overruled.

A. (Continuing): ——at the first meeting a SPEEA proposal was made to the company which consisted of stating that it was our object in negotiating to negotiate for a wage increase, changes in overtime and also stipulated that we considered it proper to introduce later on into the negotiations other items.

A few meetings later the prospective general increase requested was clarified and the statement was made that one and a half times for overtime was our request. Our proposal——

Q. (By Trial Examiner Miller—interrupting): May I interrupt for a moment, Mr. Gardiner? When you say that the percentage of increase was clarified, was SPEEA at that time, at that point, requesting an across-the-board increase in a given percentage or were you requesting varying percentages from different levels of salaried payment?

A. At that particular point our request was for 30 per cent across-the-board.

Trial Examiner Miller: Very well.

A. About six meetings later—this is approximate in my mind—the company made an offer to the SPEEA organization of six per cent plus an offer on overtime, which is a matter of record. This offer was refused by SPEEA and subsequently meetings indicated that an impasse had been

(Testimony of Edward McElroy Gardiner.)

reached. In an effort to break up this impasse——

Q. (By Mr. Weil—interrupting): Just a minute, please. A. Surely.

Q. Can you tie this down to any extent with dates approximately?

A. Yes; the offer from the company was made on June 27.

Q. That is the offer of six per cent?

A. Six per cent. [128]

Q. (By Trial Examiner Miller): Was that also across-the-board?

A. Yes, that is correct. And this offer was rejected shortly after by a ballot of the membership.

Following the impasse, the services of a mediator, concilator, were called. During the series of meetings held with the federal conciliator, additional items were brought into the negotiations at the request of the conciliator. Our purpose in doing this was——

Mr. Perkins (interrupting): I would supplement the continuing objection by objecting to the response of the witness on the ground that the purposes in connection with offers are not pertinent to the issue upon which I understood the Trial Examiner to regard this line of testimony as possibly pertinent. I understood that the course of bargaining as to dates was to be tentatively considered as pertinent by the Trial Examiner having in mind that the purpose of this is to show a correlation between the pattern of the bargaining and the pattern of the contended protective concerted

(Testimony of Edward McElroy Gardiner.)

activity. And with that in mind I do not think that the purpose of SPEEA, its motivation in concerted offers, too germane to that issue.

Trial Examiner Miller: The witness's testimony at that point was interrupted. I am not sure that his thought was fully developed. I will permit him to proceed and entertain a motion on the grounds that you have stated.

The Witness: My thought was interrupted on that. Could [129] you bring me back to the point?

Q. (By Trial Examiner Miller): You had reached a point in which additional matters were injected into the negotiations at the suggestion of the conciliator.

A. Correct. This was done in order that the company might have a clear picture of all issues that were on our mind.

Q. (By Mr. Weil): What were those additional elements?

Mr. Perkins: I move to strike the answer, Mr. Examiner, on the same ground.

Q. (By Trial Examiner Miller): Was the purpose of SPEEA in introducing these additional issues the subject of discussion at the meetings with the conciliator? Was this purpose ever actually spelled out or was it just a mental purpose?

A. It was.

Q. Spelled out?

A. It was spelled out.

Trial Examiner Miller: Objection overruled.

(Testimony of Edward McElroy Gardiner.)

Mr. Perkins: May I hear the last question and answer, please, Miss Reporter?

(Question and answer read.)

A. As a result of the discussions which followed in the presence of the mediator, it was determined that the actual impasse had disappeared.

Q. (By Trial Examiner Miller): Impasse of what? [130]

A. The impasse which caused SPEEA to request the services of a conciliator in the first place.

Q. The impasse was on what subject or subjects?

A. On the subject of wages, working conditions, the subject of negotiations up to the entrance of the federal mediator.

Q. You had mentioned in your testimony only negotiations up to that point with respect to the subject of wages and overtime. Had there been others?

A. I am trying to remember whether sick leave at that time was considered a pertinent issue.

Q. Specifically, I am not interested so much in all of the subjects that were discussed but on the subjects on which an impasse developed with respect to which it was felt necessary to introduce the conciliation service. Did the impasse develop on any subject other than wages and the overtime issue?

A. The company's offer in this particular case concerned itself only with wages, and I believe the sick leave clause, and in this particular case a re-

(Testimony of Edward McElroy Gardiner.)

jection was made by the membership, and so it was considered that an impasse had been reached.

Q. With respect to those two issues?

A. With respect to those two issues.

Trial Examiner Miller: Very well.

Q. (By Trial Examiner Miller): You have now reached the point at which you testified that the impasse had been broken as a result of the discussions with the conciliator. [131]

A. Yes. The discussions were in the presence of the conciliator at this meeting. And it was agreed to dispense with the services of the conciliator in the future for an indefinite time. The following negotiations took place under an atmosphere of——

Mr. Perkins (interrupting): I would prefer to have the testimony confined to the facts.

Trial Examiner Miller: Objection sustained.

Q. (By Mr. Weil): Can you give me the approximate date on which the negotiator was called in?

A. I believe I'd have to refresh my memory by a reference to the chronology of this. I believe it was in July.

Q. Can you tell me approximately how long the negotiator continued to operate with you, how long his participation continued?

A. I wasn't present at all of the meetings. I believe that there were three. There could have been more.

Q. (By Trial Examiner Miller): Over how long a period of time?

(Testimony of Edward McElroy Gardiner.)

A. That is another vague part in my mind here. May I refer to the facts on this particular case, records?

Q. (By Mr. Weil): Yes. I will show you the area representative's letter about which you testified yesterday, dated 9/11/52, with particular reference to that section headed by "Summary". Would you read that, please? A. Yes.

Q. Does that serve to refresh your recollection, Mr. Gardiner? [132]

A. The last meeting was held in the mediator's office September 11.

Q. After you dispensed with the mediator, what was the course of negotiation?

A. SPEEA and Boeing Airplane Company agreed to form a joint subcommittee to further investigate certain data which had been prepared by SPEEA and presented in the previous negotiations. Two representatives from the company and from SPEEA were selected to prepare joint data which would not in itself be a cause for argument. In addition, the results of the MAC poll, which had been conducted, were presented to management——

Q. (Interrupting) When was this MAC poll conducted? Was this after you dispensed with the mediator?

A. I don't have this chronology complete in my mind.

Mr. Examiner, this is why I requested the use of reports, was merely to satisfy the chronology of the events.

(Testimony of Edward McElroy Gardiner.)

Trial Examiner Miller: Very well, I am satisfied that the witness's recollection may properly be refreshed, if refreshment is available.

Mr. Weil: I believe it is.

The Witness: Mr. Examiner, I am referring to my own notes and have the data available. If this is permissible——

Trial Examiner Miller: Let the record show that the examiner has been advised that the witness has been able to determine the data by reference to notes now in his possession. [133] If counsel wishes to inspect the notes, they are at liberty to do so.

Mr. Perkins: I don't desire to do so.

Trial Examiner Miller: Very well. You may proceed, Mr. Gardiner.

A. The MAC report was given to the manager on or about 9/29/52.

Trial Examiner Miller: Very well.

The Witness: Does that answer your question?

Q. (By Mr. Weil): Yes. To tie that in, is that the same date, is that date the same about which Mr. Pearson testified that the management was informed that the action on MAC had been tabled for—— A. (Interrupting) That is correct.

Q. Continue with your——

A. (Interrupting) Yes.

Another item had been brought up in the negotiations at this time concerning itself——

Q. (Interrupting) At this time do you mean——

(Testimony of Edward McElroy Gardiner.)

A. (Interrupting) During these periods of negotiations following the dispensing of the mediator concerning the subject and agreement made between members of Aircraft Industries Association——

Mr. Perkins (interrupting): Just a minute. This perhaps is an appropriate time to raise the point that was mentioned earlier in these proceedings. In view of the fact that the complaint does not mention anything about this as being about [134] the so-called gentleman's agreement between the various aircraft companies and the Aircraft Industries Association, I would suggest that it would be appropriate for representatives of the General Counsel to state what they propose to introduce in that connection and permit me to address a proper objection to it, and, if, again, the Trial Examiner considers it appropriate to have a continuing objection, why I would suggest that, if the ruling is adverse to respondent, it is just by way of suggestion.

Mr. Tillman: Mr. Examiner, at this point, at this time, the witness just merely said that this came in as an issue, so this, as I take it, is covered by your previous ruling that this is one of the issues in the bargaining we are introducing for background. I thinks Mr. Perkins' objection, if that is what it is, is somewhat premature.

Trial Examiner Miller: That is true. He introduced the point before any statements were made on the record or any question asked as to what the

(Testimony of Edward McElroy Gardiner.)

negotiations were with respect to the gentleman's agreements or what the content of the gentleman's agreement was, but may I ask does the General Counsel expect to adduce any evidence on that point other than the mere fact that a gentleman's agreement was a subject of the discussion?

Mr. Weil: Yes.

Trial Examiner Miller: Then I take it that Mr. Perkins' point is well taken. I will request an offer of proof as to this particular matter. [135]

Mr. Weil: As to the gentleman's agreement?

Trial Examiner Miller: Yes.

Mr. Weil: The General Counsel offers to prove that there was in existence, among the members of the Aircraft Industries Association, an association of apparently most, if not all, of the companies engaged in the production of aircraft and aircraft parts, an agreement not to hire employees from one another. This agreement has, whatever the agreement may be in itself, and we are unable to adduce proof as to that at this time, the agreement has had a certain and very definite effect on the members of SPEEA in their thinking towards the MAC. In other words, the MAC is at least partially based upon a desire to get around or override the gentleman's agreement. As such the gentleman's agreement is a definite causal factor of the MAC and certainly part of the background upon which the MAC should be considered, if it is to be, if an adjudication is to be, as to whether MAC is a protected, concerted activity.

(Testimony of Edward McElroy Gardiner.)

Mr. Perkins: Am I correct in interpreting counsel's remark to say in essence that the General Counsel does not propose to prove any gentleman's agreement so-called but intends to prove only reference to what is contended to be an agreement in the bargaining negotiations?

Mr. Weil: No, that is not a correct statement. The General Counsel intends to prove the impact of the gentleman's agreement upon the situation which the Board has here before it, that in [136] proving that impact the General Counsel will necessarily be led into the MAC as it was understood to exist to the members of SPEEA. I mean the gentleman's agreement as it was understood to exist by the members of SPEEA. For that purpose, the General Counsel intends to put in certain evidentiary matters, including the letter explaining the A.I.A. gentleman's agreement written by Mr. Logan, and certain other letters, which, I believe, will have a tendency to prove what the gentleman's agreement actually is. To that extent I would say that your summation is correct.

Trial Examiner Miller: Let me ask this in the light of Mr. Perkins' question. Will I, as a Trial Examiner, be required or called upon to make any finding of fact as to what the gentleman's agreement consisted of or will I be required to make a finding as to what the members of SPEEA understood it to involve?

Mr. Weil: The latter.

(Testimony of Edward McElroy Gardiner.)

Trial Examiner Miller: Very well. Does that answer your point?

Mr. Perkins: I understand your answer to the question to be, to mean, to prove the agreement? Am I correct in that? I understood he is referring to a letter from Mr. Logan in which what is referred to as a gentleman's agreement and how it works is described. I am not too clear as to what the answer meant.

Is it intended that the agreement be proven or is the Trial Examiner—— [137]

Trial Examiner Miller (interrupting): I take it that agreement could be proven in a legal sense only by competent evidence by a person qualified to testify as to what the agreement was.

Mr. Perkins: That would be my understanding.

Trial Examiner Miller: So that if the letter and other letters are offered merely to prove that certain concepts with relation to the agreement were communicated to SPEEA members, that would not be, in my view, proof of the agreement.

Mr. Perkins: If that is the intention I think I am clear on General Counsel's statement or what their intended proof is to be.

Mr. Tillman: I might make one supplemental statement. As I see it, we are not barred from making proof of the agreement as well as SPEEA's understanding of it. If both of them go in, so much the better, but as far as we are concerned we only need to show SPEEA's concept of the gentleman's

(Testimony of Edward McElroy Gardiner.)

agreement, and the extent to which concept then affected their action on MAC.

Mr. Perkins: On that point, Mr. Tillman, I would at least take the position on behalf of respondent that you are barred from proving such an agreement as being pertinent to the issues in this case, because it seems to me that within the statute and within the rules of the Board it would be necessary in order to allege the agreement in the complaint, to describe it in terms or the general purport of it, and allege in the complaint, as I understand your contention, that the concerted activities of the [138] SPEEA organization here are in a sense protected by reason of its existence and by its existence I mean the existence of the so-called gentleman's agreement.

Mr. Tillman: I think you somewhat misunderstand the significance of a complaint, Mr. Perkins. We are not alleging the gentleman's agreement as an unfair labor practice and, therefore, as I see it, do not have to make any allegation concerning it in the complaint. We have asserted in the complaints generally that Mr. Pearson, while engaged in a concerted activity was discharged, and that the action of discharging him constituted also a violation of 8 (a) (5) in connection with certain other activities of respondent, none at all being based on the gentleman's agreement, if it exists or does not exist.

Trial Examiner Miller: Essentially, Mr. Perkins, as I understand the issue now, in the light of the

(Testimony of Edward McElroy Gardiner.)

offer of proof, let me try to be as specific as possible. Especially what the General Counsel appears to be trying to prove is that the gentleman's, that the MAC is a protected, concerted activity as the General Counsel sees it, because it was an attempt on the part of a group of employees of SPEEA to overcome a limitation on their freedom to seek employment in the industry or a limitation on the availability of employment in the industry. Now, whether or not proof of that type would justify a conclusion that the concerted activity is protected is something for me to determine and something for the Board to determine. Especially, as I see it, [139] that is what the General Counsel appears to be after.

Do I correctly state it, Mr. Tillman?

Mr. Tillman: That is correct.

Mr. Perkins: My only point is, Mr. Examiner, if the contention that the activity is protected is based upon the existence of an agreement which I understand to be a position of General Counsel, it seems to me that at least within my concept of the functions of the complaint that the agreement should be alleged as described and respondents given an opportunity to explore the issue and the contention as such prior to the time of hearing.

Trial Examiner Miller: My impression at the moment, and, if necessary, I will express this in a formal ruling, my impression at the moment is that on the theory of the General Counsel's case, as I understand it, allegation of the agreement and

(Testimony of Edward McElroy Gardiner.)

proof of the actual content and scope of the agreement need not be spelled out in General Counsel's complaint. Now, insofar as this affects the proof, I take it, that what we are confronted with is this, General Counsel expects to prove that the members of SPEEA had a certain conception of the limitations on their freedom of the contract posed by the gentleman's agreement, that they undertook certain concerted action to overcome these limitations on their freedom of contact, that the General Counsel's ultimate theory then would be that concerted action taken to overcome a limitation on one's freedom of contract is a protected, [140] concerted action or activity, or should be regarded by the Board as such.

Mr. Perkins: Is that the General Counsel's position?

Trial Examiner Miller: Is that the General Counsel's position? Is my assumption correct?

Mr. Weil: Your assumption is correct, except that that is not the only grounds on which we feel the activities are protected. But that is one of the grounds.

Mr. Perkins: Perhaps I can shorten this, Mr. Examiner. If this is the General Counsel's position, then the question is posed as to whether respondent should request the continuance of the hearing to prepare on that issue, and I can state to you now we are prepared to go forward, but we will object to the relevancy of the evidence along that line.

(Testimony of Edward McElroy Gardiner.)

Trial Examiner Miller: Very well. Without expressing any opinion at this time as to the validity of the General Counsel's ultimate contention in this regard, I am going to permit the General Counsel to make their record, and you may have your continuing objection.

We will be in recess for five minutes.

(Short recess.) [141]

Trial Examiner Miller: The hearing will be in order.

Q. (By Mr. Weil): Mr. Gardiner, you were stating that the matter of the gentleman's agreement had come up in the course of discussion. Would you go on there, please?

A. Yes, then a letter from the company was requested explaining the company's understanding of the agreement, and such a letter was received from Boeing Airplane Company in a letter dated October 13.

Mr. Weil: Would you mark this, please, as General Counsel's No. 10.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 10 for identification.)

Q. (By Mr. Weil): Is this the letter to which you have reference? A. Yes.

Mr. Perkins: May I ask the witness a question, please?

Trial Examiner Miller: Surely.

Q. (By Mr. Perkins): Mr. Gardiner, I notice some red pencilling here at the top of this General

(Testimony of Edward McElroy Gardiner.)

Counsel's ten for identification. Was that on the letter when you received it or can you explain it?

A. No.

Q. The answer is no? That was put on the letter after you received it?

A. Yes. As far as I know it didn't arrive in that form. In [142] other words, my comment is that this was the letter and it doesn't indicate the admissions that have been made.

Mr. Perkins: Respondent has no objection to the admission of the letter subject to the objection which I understand to be continued.

Trial Examiner Miller: Yes.

General Counsel's Exhibit No. 10 will be received.

(The document heretofore marked General Counsel's Exhibit No. 10 for identification, was received in evidence.)

[See page 503.]

Q. (By Mr. Weil): In response to your receipt of that letter, was the matter discussed further?

A. The matter was discussed and the objections which SPEEA had to their understanding of the gentlemen's agreement as read from the letter and as judged from the receipt of letters sent to individuals.

Mr. Perkins: May I ask that the latter part of that answer be stricken on the grounds that it is not the best evidence, that it expresses, I believe, something in the nature of an opinion. I didn't think it was responsive.

(Testimony of Edward McElroy Gardiner.)

Trial Examiner Miller: I will sustain the objection. That portion of the witness's answer which indicates a judgment based by letters received by individuals, an objection is sustained thereto.

Q. (By Mr. Weil): Was your judgment based on any evidence other than the evidence contained in the letter which has been received in evidence as General Counsel's Exhibit No. 10? [143]

A. Perhaps I can say it this way, that we have——

Mr. Perkins: I believe the question calls for a yes or no answer.

Trial Examiner Miller: Yes.

A. Yes.

Mr. Weil: Will you please mark for identification General Counsel's Exhibits Nos. 11, 12, 13, 14, and 15.

(Thereupon the documents above referred to were marked General Counsel's Exhibits Nos. 11 through 15, inclusive, for identification.)

Mr. Perkins: Mr. Examiner, may we go off the record momentarily?

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Q. (By Mr. Weil): Was the committee shown other letters addressed to individuals?

Mr. Holman: What committee are we referring to now?

Mr. Weil: The Executive Committee.

(Testimony of Edward McElroy Gardiner.)

A. The Executive Committee was shown other letters.

Q. (By Mr. Weil): To whom were these letters addressed, to the Association, or to individual members? A. To individual members.

Q. Did the individual members take the matter up with the Association or with the Executive Committee? [144]

Mr. Perkins: I object to that, as to what matters we are referring to. The exhibits are not in evidence yet.

Mr. Weil: I am trying to lay a foundation to put them in evidence.

Trial Examiner Miller: I will overrule the objection.

Mr. Weil: Would you repeat the question, please?

(The question was read as follows:

"Q. Did the individual members take the matter up with the Association or with the Executive Committee?")

A. The individual members did take the matter up with the Executive Committee acting for the Association.

Q. (By Mr. Weil): Did they show you the letters that they had received? A. Yes.

Q. Are these (indicating) the letters which they showed you? And I'll show you General Counsel's Exhibits for identification numbered 11 through 15.

A. These letters were shown to members of the Executive Committee at different times. I feel I must state this for the record. In other words,

(Testimony of Edward McElroy Gardiner.)

when these are properly identified I can state that these have been shown before the time in which this matter was brought up to the company. Now, two of the letters dated the 8th of January and the 20th of January were not shown to the Executive Committee until after the MAC had been started in this particular case, and so I don't know whether this [145] constitutes a proper assembly of the evidence.

Q. That is the question I asked. As a result of these letters, was the factual situation which confronted the Executive Committee in their action regarding the MAC substantiated or changed?

Mr. Perkins: I don't understand that question.

Trial Examiner Miller: I don't either.

Q. (By Mr. Weil): Did the knowledge of these letters by the Executive Committee and the knowledge of the contents of these letters by the Executive Committee change the opinion of the Executive Committee and their subsequent actions in regard to the MAC or substantiate the actions which the committee had at the time they received such knowledge, the intention of taking——

Mr. Perkins: Excuse me for interrupting you, Mr. Weil. It seems to me that that question is more appropriate as to the ruling on the admissibility of these exhibits. We don't know anything of the contents as a part of the record in this case at this point, and it just doesn't seem to me that the pertinency of a question is apparent at this point in the record.

(Testimony of Edward McElroy Gardiner.)

Trial Examiner Miller: I think the objection is well taken.

Mr. Weil: Let me at this time offer the exhibits.

Mr. Perkins: These exhibits 11 through 15 for identification are now offered, as I understand it. Respondent objects to the admission of these exhibits under respondent's continuing objection as to the relevancy and materiality of the subject [146] matter dealt with in these letters and as to the matters sought to be proven by these letters, and to the extent that these letters are offered in evidence for the purpose of proving or tending to prove an agreement between respondent and other companies, aircraft companies included. Respondent objects on the ground that the letters are not the best evidence, and on the further ground that the letters amount to hearsay evidence.

Trial Examiner Miller: The objection is overruled.

The exhibits will be received.

(The documents heretofore marked General Counsel's Exhibits No. 11 through 15, inclusive, for identification, were received in evidence.)

[See pages 507-511.]

Q. (By Mr. Weil): Mr. Gardiner, you mentioned most recently, quite recently, that because of the impasse which the information about the AIA gentlemen's agreement had on the negotiating committee that you brought up——

Mr. Perkins (interrupting): I object to the form

(Testimony of Edward McElroy Gardiner.)

of question referring to the impasse. If the intention of the question is to bring out from the witness what the Executive Committee did by reason of the receipt of these letters, I have no objection.

Trial Examiner Miller: I so understand it.

Is there more to the question?

Mr. Weil: I so intended it.

Mr. Perkins: I have no objection.

Trial Examiner Miller: Very well.

A. With the letter from Mr. Logan of October 13th, with the [147] letters indicated in evidence, and with indication of other letters, which have not been admitted as evidence in this case, the subject was discussed with the company in following negotiations sessions and the reasons for our concern over this gentlemen's agreement were expressed to the company, at subsequent meetings at Boeing Airplane——

Mr. Perkins: May I ask that the remark with reference to other letters be stricken. These are the letters that have not been admitted into evidence.

Trial Examiner Miller: The remark will be disregarded.

A. In a formal negotiation meeting with Boeing Airplane Company two questions were asked of Mr. Logan. The first question was that in view of our concern of the effect of the AIA gentlemen's agreement upon the freedom of the individual engineer to form a contract or seek employment elsewhere, we requested that the company cease and desist from its continuance of the understanding or agree-

(Testimony of Edward McElroy Gardiner.)

ment as was expressed in the letter of October 13. Mr. Logan said they would not. Secondly, and in view of this refusal, the company was asked whether they would permit an inclusion in the contract which we were in the process of agreeing to, would include provisions which would allow activities such as the MAC to be conducted and permitted as a definite part of this contract. This was refused.

Q. (By Trial Examiner Miller): Do you remember the date on that or the approximate date of the conference at which these [148] two issues were raised?

A. I will refer to my notes, if you would care for me to.

Q. If you would.

A. This meeting was held on or about December 5, 1952.

Trial Examiner Miller: Go ahead.

Q. (By Mr. Weil): To return to a subject that we mentioned rather briefly yesterday, Mr. Pearson in his testimony estimated that on October, about or on about the first of October, I believe it was, the membership of SPEEA was something like 2,000. When you took the stand you estimated that it was something like 1,300. Have you had occasion to refresh your recollection in the meantime?

A. Yes.

Q. Would you tell us about it, please?

A. In order to refresh my memory on that I checked the actual membership listings at that time

(Testimony of Edward McElroy Gardiner.)
and found it to be 2,100. I feel that that correction should be inserted.

Q. (By Mr. Weil): Was that November 24? Did I give the wrong date?

Q. (By Mr. Perkins): May we go off the record?

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Let the record show that during the period of the discussion off the record a question was raised with respect to the date [149] of the meeting questioned by the Trial Examiner, and that there has been some clarifying discussion with respect to the date of that meeting. As a result of that clarifying discussion, are you in a position to state your present understanding with respect to the date of meeting, Mr. Gardiner?

The Witness: Yes; the date of the meeting is on or about November 24.

Trial Examiner Miller: Very well.

Q. (By Mr. Weil): As a result of Mr. Logan's refusal, relative to his answer to the two questions that you mentioned in that negotiating session, which apparently took place on November 24, was the Executive Committee moved to take any further steps concerning the MAC?

A. The SPEEA Executive Committee did not take any steps at that particular time, because other items were under consideration at that particular time also. The company had made us an offer to

(Testimony of Edward McElroy Gardiner.)

which we were at that time suggesting certain alterations. This concerned the retro-activity clause of overtime and an anniversary date, and we wished to have a clarification of the company position on these two questions before subjecting the company offer to a membership ballot. This clarification was received from the company and the ballot taken.

Q. Can you approximate the date of that ballot?

A. It was early in December, I believe.

Q. That is close enough. [150]

A. Final comment on the negotiations was our decision in view of the impasse reached by virtue of the company's stating that last offer was their ultimate position, and the majority of the membership indicating their refusal to accept this offer, was to start the MAC activity and we so notified the company, and this was done in the letter which I believe has been offered in evidence. Is that right?

Mr. Perkins: Let's identify that exhibit for the record.

Trial Examiner Miller: No. 5, General Counsel's 5.

Mr. Tillman: May I ask the witness, what date was that decision made, again, to go ahead with the MAC more or less?

The Witness: The latter part of December.

Q. (By Trial Examiner Miller): Mr. Gardiner, you speak of an impasse reached which impelled the Executive Committee to go ahead with MAC. Let me ask, as of this date in December, when

(Testimony of Edward McElroy Gardiner.)

the membership had rejected the company's last offer, had that offer included any statement of a company position with respect to a wage increase which differed in any way from their original offer of six per cent?

A. No. There was an additional unilateral indication of company intent——

Mr. Perkins: I ask that that be stricken.

Trial Examiner Miller: I will permit the witness to finish the statement and entertain a motion to strike.

A. (Continuing) ——to increase one form of remuneration to the [151] membership, namely, that of the Merit Review Plan and for clarification, in the past, the company has in the past, allocated approximately three per cent of the payroll to raises granted throughout the representation, three per cent per annum, I should say, in this case, and the company stated that it was their intention to raise this to six per cent or three per cent per review with two reviews being given per year. This was not to be part of the contract.

Q. (By Trial Examiner Miller): This statement of company's position had been made before balloting to the membership on the company's last offer?

A. That is right.

Q. And the last offer insofar as a general wage increase was concerned indicated no change in the company's position concerning a general increase?

A. That is right.

Trial Examiner Miller: Very well.

(Testimony of Edward McElroy Gardiner.)

A. In the letter of transmittal of the indication letter of the MAC.

Q. (By Trial Examiner Miller): General Counsel's No. 5?

A. General Counsel's No. 5. One section indicated that the MAC had been started in view of the restraint of freedom on the right of engineers to seek other employment as we understood the gentlemen's agreement. Now, I would like to be able to refer to General Counsel's No. 5 for clarification on that. If you [152] wish me to get this, why, I can.

Q. You may quote it, if you wish, or may refer to it by designation in the exhibit.

A. The paragraph three of the exhibit states, "This conference is being conducted for the following purposes:

"'(a) To provide members with improved opportunity to bargain for their services. Our membership"——

Mr. Perkins (interrupting): The letter is in evidence, Mr. Examiner.

Trial Examiner Miller: I realize that. I will permit the witness to quote.

A. (Continuing) ——"Our membership has requested SPEEA to restore the freedom and privacy of engineers who seek to improve their situations by changing employers.

"'(b) To obtain data on the true market value of engineers with various amounts of experience.'"

Trial Examiner Miller: Mr. Weil.

(Testimony of Edward McElroy Gardiner.)

Q. (By Mr. Weil): Mr. Gardiner, the MAC having been put on the road by the Executive Committee, and was the Executive Committee then watching the MAC Committee's actions closely so that you were aware of the individual steps taken by the MAC Committee in getting this show on the road?

A. Yes. Through our liaison officer in this particular case, who kept cognizance of the activities of the MAC Committee. This committee was one of a large group of committees, and, therefore, [153] complete cognizance was not kept by all members of the committee.

Q. To go back to this last offer or the ultimate offer of the company, was that offer less than the original offer or more than the original offer that was made in July?

A. The company offer as such was less by virtue of the retroactivity clause on overtime.

Q. Would you explain that.

A. Yes. At the offer made in July, the company had stated that it was their intention to pay overtime in a manner indicated, which we have called the "Lockheed formula", such overtime payments to be made retro-active to the anniversary date of the contract, which was in July 1. The last offer stated that the general raise would be granted on six per cent and that this general raise provision would be retro-active to July 1, and that the overtime would start as of January 2, and that there would be no retro-activity.

(Testimony of Edward McElroy Gardiner.)

Q. January 2, 1953? A. 1953.

Q. As to the letter, General Counsel's Exhibit No. 5, which was sent to the company, what was the next indication or response that you received to that letter from the company of their awareness of their receipt of the letter?

A. The response that occurs to me in this particular case was word from Mr. Pearson that he had just been terminated by the company. [154]

Q. Had you been informed prior to the time that you received this word from Mr. Pearson that he was to be terminated or that he had been terminated? A. No.

Q. Did you as chairman of the Executive Committee take any action on hearing on Mr. Pearson's termination?

A. Yes. After conferring with Mr. Pearson in a meeting of the members of the Executive Committee, we first offered him employment in SPEEA in order that his income would not be cut, and, secondly, requested a negotiation of this particular incident with the company.

Q. (By Trial Examiner Miller): Before you go ahead with this particular subject, Mr. Gardiner, there is a question that occurs to me. I am not sure that our record is clear on this point as yet. But with respect to what has been described as the company's ultimate offer, that is, the status of its offer in December, you indicated that there was a ballot of the membership and that the membership rejected the company's offer as it then stood.

(Testimony of Edward McElroy Gardiner.)

A. That is correct.

Q. Was the fact that the membership rejected the offer communicated to the company in a formal fashion? A. Yes.

Q. How and when?

A. I believe that was communicated by letter.

Q. Some time after the ballot? [155]

A. Yes.

Mr. Perkins: May I state that on respondent's case we intend to put in the exchange of correspondence between the parties that reflected the offer and the rejection.

Trial Examiner Miller: Very well.

The Witness: Shall I continue?

Trial Examiner Miller: Yes, discussing the situation of Mr. Pearson.

A. The negotiation meeting was held with company officials, and——

Q. (By Mr. Weil—interrupting): When was that held?

A. Here we go on dates again.

Q. I will bring you up to date with the company's note so that there won't be any question about it. Showing you this notation, would you read that, with particular attention to dates.

A. Yes.

Q. Does that refresh your recollection as to when this negotiating was done?

A. It does. The meeting was held, I believe, on February 6.

Q. What was taken up at this meeting?

(Testimony of Edward McElroy Gardiner.)

A. The prime problem was that of the discharge of Mr. Pearson. It was our contention that Mr. Pearson was conducting his activities as a member of SPEEA and had concerned himself with SPEEA activities in carrying this out, and that we felt that Mr. Pearson had been unjustly terminated. In addition, we stated that we felt [156] that there had been a misunderstanding occurring during the conference which resulted in the termination of Mr. Pearson. This misunderstanding, we believe, might have been unintentional, that is, Mr. Logan requesting this conference genuinely wanted to determine why Mr. Pearson had done what he had done. Mr. Pearson had in turn wished at this conference to have representatives from SPEEA with him, as he considered that the subject under discussion was to be that of concern to SPEEA and pertinent to SPEEA. Mr. Pearson in effect refused to discuss the situation without the presence of SPEEA representatives and Mr. Logan in this particular case restated that it appeared that he had felt that our presence was not required. On that basis——

Mr. Perkins (interrupting): I ask that that be stricken as hearsay. We already have had the direct testimony as to what occurred.

The Witness: I say that this was a statement by us, SPEEA.

Q. (By Trial Examiner Miller): At the February 6 conference? A. Yes.

Mr. Perkins: I will withdraw the objection.

A. On that basis it was arranged that a second

(Testimony of Edward McElroy Gardiner.)

conference be held, as it appeared that Mr. Logan had no objection to the attendance of the SPEEA representatives requested by Mr. Pearson, and this meeting was held shortly thereafter.

Mr. Weil: May we go off the record?

Trial Examiner Miller: Off the record. [157]

(Discussion off the record.)

Trial Examiner Miller: On the record.

Mr. Perkins: Mr. Weil, I don't mind if you want to put those in his hand.

Mr. Weil: He is doing pretty well without them.

Q. (By Mr. Weil): These are the notes of February 6 and following meetings concerning Mr. Pearson's discharge. If they will assist you, help yourself.

Trial Examiner Miller: The immediate question is, as I understand it, is the second meeting to consider Mr. Pearson's discharge, at which representatives of SPEEA were present.

Mr. Weil: That is right.

A. This meeting was held and Mr. Logan restated his questions to Mr. Pearson——

Trial Examiner Miller (interrupting): May we have the date?

A. This meeting is not in the notes.

Q. (By Mr. Weil): Which meeting are you referring to, a meeting held subsequent to February 6?

A. This was the meeting held subsequent to the negotiation meeting of February 6.

Q. But prior to the meeting of March 5?

(Testimony of Edward McElroy Gardiner.)

A. Yes.

Q. (By Trial Examiner Miller): There is in evidence now, Mr. Gardiner, a letter restating the company's position with respect [158] to Mr. Pearson, dated, I believe, February 11. Are you in a position to say at this time whether the second meeting which you are now testifying about in which Mr. Logan restated his questions was held before or after the February 11 letter?

A. It is my opinion that the meeting was held before.

Trial Examiner Miller: Very well.

A. In fact, I believe the meeting was held within a day or so following the negotiation meeting.

Trial Examiner Miller: Proceed with your description of the events of this meeting where Mr. Logan restated the company's position.

A. Mr. Logan restated the company's position, and the company—and also stated the company's opinion concerning the propriety of Mr. Pearson's actions. Mr. Pearson answered and stated what he considered to be his point of view concerning the propriety and the ethics of his actions. A general discussion followed and Mr. Logan stated that he would supply us the written—with the letter stating the company opinion and stand on this matter.

Q. (By Mr. Weil): Were there any other meeting that concerned themselves with the discharge of Mr. Pearson? A. Yes.

Q. When was the next meeting of that nature?

(Testimony of Edward McElroy Gardiner.)

A. As I see these notes here, I believe this was March 5, though I believe that it would be proper to note at this time that in the interim the SPEEA organization had notified the [159] company that they could not be, they would not agree to any contract between the company and SPEEA until Mr. Pearson's case was clarified.

Mr. Perkins (interrupting): I have a copy of that letter here. Do you recall the date of that?

The Witness: No, sir.

Mr. Weil: I believe that that was the letter of February 13.

Mr. Perkins: Yes, I just turned to it here.

Q. (By Mr. Weil): Is this a copy of the letter to which you had reference? A. Yes, sir.

Q. I think it might we well—can you explain interlineations that appear on the letter?

A. Yes. Those were inserted and initialed by myself because of the——

Mr. Perkins (interrupting): I am willing to stipulate those those were on the letter as the company received them.

Trial Examiner Miller: Very well. The stipulation is noted for the record.

Mr. Weil: Would you mark this as General Counsel's Exhibit No. 16 for identification?

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 16 for identification.) [160]

Mr. Weil: I would like to offer that.

(Testimony of Edward McElroy Gardiner.)

Trial Examiner Miller: Is there any objection to the receipt in evidence of General Counsel's Exhibit No. 16?

Mr. Perkins: Respondent has no objection.

Trial Examiner Miller: Very well. On the basis of the understanding expressed off the record while the reporter was marking the exhibit, it is understood that these are copies of the original letters and that there is no objection to the receipt in evidence of copies. With that understanding there being no objection, Counsel's Exhibit No. 16 will be received in evidence.

(The document heretofore marked General Counsel's Exhibit No. 16 for identification, was received in evidence.)

[See page 512.]

Q. (By Mr. Weil): What took place after that?

A. A letter was received from the company.

Q. Is this (indicating) the letter to which you have reference? A. Yes.

Mr. Weil: Would you mark that as General Counsel's Exhibit No. 17 for identification, please.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 17 for identification.)

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Mr. Weil: I would like to offer this letter of March 2. [161]

Trial Examiner Miller: Is there any objection

(Testimony of Edward McElroy Gardiner.)

to the receipt in evidence of General Counsel's Exhibit No. 17, a company letter to the SPEEA organization dated March 2?

Mr. Perkins: No objection.

Trial Examiner Miller: There being no objection, Counsel's Exhibit No. 17 will be received.

(The document heretofore marked General Counsel's Exhibit No. 17 for identification, was received in evidence.)

[See page 514.]

Mr. Weil: Would you go on?

A. This letter contained the statement that the company would re-employ Mr. Pearson. Following that a meeting was called by SPEEA with Boeing Airplane Company to discuss the situation and the best means of effecting, the most proper means of effecting, his re-employment. This meeting was held March 5. An understanding was reached during that meeting as to the means by which Mr. Pearson would be employed and the company's position was stated as to their views on the propriety and ethics of the MAC activity in general, and, in addition, their views concerning Mr. Pearson individually. SPEEA stated that it felt that Mr. Pearson's future would be damaged if allegations were made in references which would undoubtedly be requested of the company in case he requested employment elsewhere. The company stated that requests for references would be answered only to the extent of Mr. Pearson's technical proficiency and that they did not feel that such would be the case. [162]

(Testimony of Edward McElroy Gardiner.)

Mr. Perkins: I didn't understand what you meant by that, Mr. Gardiner, just the last phrase.

The Witness: All right.

Mr. Perkins: May we hear the last phrase?

(The latter part of the last statement was read as follows:

"The company stated that requests for references would be answered only to the extent of Mr. Pearson's technical proficiency and that they did not feel that such would be the case.")

Q. (By Trial Examiner Miller): Would you explain the last part of that answer, Mr. Gardiner?

A. The "such" in this particular case referred to the damaging of his future.

Mr. Perkins: I understand.

A. The company also stated in this meeting that their decision to re-employ Mr. Pearson did not indicate an alteration of their basic views toward the MAC itself. It felt that the re-employment of Mr. Pearson would result in the removal of a stumbling block to the negotiations affecting the SPEEA and the company.

Q. (By Mr. Weil): Mr. Gardiner, what was the condition of the MAC at this time, March 5, I believe it was?

A. At that particular time the deadline for the return to the invitations had been passed, and in view of the returns received it had been decided by SPEEA to cancel the present plans for the MAC.

Q. Was that decision on the part of the Exec-

(Testimony of Edward McElroy Gardiner.)

utive Committee, [163] that part of that decision which was on the part of the Executive Committee, a decision that the MAC would no longer be considered by SPEEA in any respect, or simply that at that time it would not——

A. Absolutely not. The decision was made simply to cancel this particular MAC convention, I will say. The SPEEA considers organized employment have——

Mr. Perkins (interrupting): May I ask that this be stricken, please?

Trial Examiner Miller: It begins to sound like a statement of position rather than a statement that occurred at that time.

Does that complete your recital of the events that occurred at this meeting when the company set forth at length its position with respect to the re-employment of Mr. Pearson?

The Witness: There is one last item that I would like to state, if I may.

Trial Examiner Miller: If you would.

A. And that is that the SPEEA requested that there be some way in which a discussion of proposed conduct on the part of SPEEA could be discussed with the company relative to the institution of conduct.

So that an indication of the company's stand against such conduct could be made evident, the company replied that it was their opinion that this would probably be illegal, and that it was their stand that they considered it best to wait until such

(Testimony of Edward McElroy Gardiner.)

[164] conduct had been instituted and then take whatever action in the light of their knowledge of the subject and all other conditions, to take what action appeared proper and usual.

Trial Examiner Miller: Does that complete your recital of the substance of this particular meeting?

The Witness: That is right.

Trial Examiner Miller: At this time we will recess until 1:30 this afternoon.

(Whereupon, a recess was taken until 1:30 o'clock p.m.) [165]

After Recess—1:30 p.m.

Trial Examiner Miller: The hearing will be in order.

Mr. Weil: Mr. Gardiner, will you take the stand again, please.

EDWARD McELROY GARDINER

resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Weil): Mr. Gardiner, to go back to the question of the invitation to participate in the MAC, I believe there is a latent ambiguity in your testimony concerning what engineers were invited to participate in the MAC. Would you go over that?

Mr. Perkins: I didn't know of any invitation to any engineers.

Mr. Weil: Not the invitation, as far as that

(Testimony of Edward McElroy Gardiner.)

questionnaire was sent out to engineers that asked these questions, will you participate, and so forth.

Mr. Holman: You mean the poll?

Mr. Weil: Yes, the poll.

Trial Examiner Miller: The normal ballot.

Mr. Weil: The normal ballot of the engineers whether they wished to participate.

Mr. Perkins: May I hear the question as rephrased?

Q. (By Mr. Weil): In regard to the original ballot or poll of engineers questioning what engineers would be interested in participating in the MAC, it appears to me that there may be a [166] latent ambiguity in the record as to what engineers were polled, and I wish that you would clear that up and explain who were polled.

A. I see. All engineers of the SPEEA organization were polled, with the exception of those engineers working for Continental Can Company under contract at that particular time. In other words, the engineers polled and those whom we would consider as being called for the attendance at the MAC included those in Boeing Airplane Company or out of Boeing Airplane Company, who at that particular time would not be disqualified by virtue of some contractual obligation which would preclude their attending such a conference. This then would include men working for Boeing, who were members of SPEEA, men who are members of SPEEA, who no longer were working for Boeing or who were working elsewhere, but would not in-

(Testimony of Edward McElroy Gardiner.)

clude those for whom we had negotiated contracts which possibly would preclude their attending such a conference.

Q. Another matter which concerns me, in the joint conference about which you testified earlier, which took place around the 9th, I think, of February, somewhere around that time concerning Mr. Pearson's discharge, the conference at which Mr. Pearson attended, was any mention made by Mr. Logan in that conference of the possible damage to the Boeing Airplane Company which might or had resulted from the action taken towards MAC?

A. Yes. Mr. Logan mentioned that it was the company's opinion that they had suffered damage and he held up a sheaf of papers [167] which he stated were correspondence from other companies or other organizations expressing—I will use a term that is my own in this case—I don't consider it a direct quote—concern over the MAC, and to this extent, he stated in effect that damage had accrued to the company.

Mr. Perkins: What was the date of this? Is the record clear on that?

Trial Examiner Miller: The conference of February 9.

Q. (By Mr. Weil): When did you cease to be the chairman of the Executive Committee?

A. In March, 1953.

Q. When in March?

A. It would be, I think, at the time the new Executive Committeemen were voted in, but I be-

(Testimony of Edward McElroy Gardiner.)

lieve it was very close to the first of March. This official transfer took place at the monthly meeting of March.

Q. Which, according to previous testimony, would have been the second Monday of March?

A. It should have been, yes.

Mr. Weil: I think that is all.

Trial Examiner Miller: Mr. Cluck.

Mr. Cluck: I have no questions.

Mr. Holman: Mr. Examiner, I wonder if at this time I may ask for a recess of about a minute so that I may get the minutes of SPEEA which we have subpoenaed. I would like to put some [168] indices in them to save time in my examination.

Trial Examiner Miller: We will recess for whatever period of time is required.

(Short recess.)

Trila Examiner Miller: The hearing will be in order.

Cross Examination

Q. (By Mr. Holman): Mr. Gardiner, in order to clarify my view as to when you first entered SPEEA, would you please state that for me once more, when you first joined SPEEA?

A. Well, I believe the court records are available on that.

Q. Was it about 1949?

A. I believe so, yes.

Q. You have been in SPEEA ever since then, I take it?

(Testimony of Edward McElroy Gardiner.)

A. That is right.

Q. When did you first hold any office in SPEEA? I am speaking now of any committee assignment or assignments of the Executive Committee.

A. Well, my first assignment was the Executive Committee, which I believe was in December of '50 or January of '51. It was back in that particular time, and my services before that time had gone on for the preceding half or three-quarters of a year more or less on committees.

Q. I see. So you became a member of the Executive Committee in December or January 1951?

A. That is right. [169]

Q. You were on the Executive Committee as such as a member until—when was the time you were made chairman?

A. Well, I was made chairman pro-tem, I believe it was, in November of '51, and at the time, at this particular time, I ran for office again, and following that election I was elected as chairman.

Q. As member of the Executive Committee now you were on the governing body of SPEEA, is that true?

A. That is true.

Q. They were charged with the responsibility for negotiating for SPEEA and also operating the club organization, is that correct?

A. That is right, excepting in those areas which have been specifically limited in the constitution the

(Testimony of Edward McElroy Gardiner.)

SPEEA Executive Committee has the authority and responsibility.

Q. But as between the members of your group, they were responsible to your group, is that correct, that is, the people.

A. Could you rephrase that?

Q. The people who were on the varying committees doing work for SPEEA were under your general surveillance and approval of the Executive Committee? A. Not entirely.

Q. What do you mean by that?

A. There are certain committees which are responsible directly to the membership. For instance, the Tellers Committee is one [170] who does not report to the Executive Committee but to the membership.

Q. What other committee?

A. I was trying to think of the name of it. The Auditing Committee.

Q. Are there any other committees other than that?

A. Not that I can recall. We consider that committees appointed by the Executive Committee can tender a report for approval to the general membership.

Q. Are you advised of those reports?

A. It is the purpose of the organization that we be advised.

Q. As far as you know, you are advised of the reports? A. Not always.

(Testimony of Edward McElroy Gardiner.)

Q. Is it standard procedure not to be advised of the report?

A. It is the standard procedure to be advised. I am just indicating that not in all cases, but in some cases some things slip through.

Q. Surely. Of those committees, in your organization one is the Action Committee, I believe, is that correct? A. That is correct.

Q. That was formed back in about the fall of 1951, was it? A. Yes.

Q. That was formed for the purpose of reviewing various methods and actions which could be taken with respect to bringing pressure on the Boeing Airplane Company in its negotiations with SPEEA, is that correct? [171]

A. Should it be necessary, that is right.

Q. Should it be necessary?

A. That is right. It is the Planning Committee only. It is considered as a planning committee only.

Q. I see. You were advised from time to time of the planning done by that Action Committee, were you?

A. That is right. The committee in 1951 made one report.

Q. And this Action Committee was formed in 1951 because they felt that the company and SPEEA were not getting together on a contract?

A. No.

Q. Why was it formed?

A. The committee was formed because it was considered that there was a possibility that and

(Testimony of Edward McElroy Gardiner.)

SPEEA and Boeing would not get together on a contract.

Q. Mr. Gene Williams was chairman of that committee, is that correct? A. Yes.

Q. You were aware, I take it, of the activities of the Action Committee?

A. As given by the single report given to the membership.

Q. That would be a membership meeting, would it?

A. A special membership meeting, that is right.

Q. You had been familiar with the reports given to the membership at the membership meeting by the Action Committee? [172] A. Yes.

Q. Calling your attention to the meeting in June 1952 of the membership, is it not a fact that at that time the Action Committee proposed to the Membership Committee a plan, to the membership, a plan of suggested activities which SPEEA could take against the company? A. Yes.

Q. Is it not a fact that one of the suggested plans of action suggested was the Manpower Availability Conference? A. Yes.

Q. There were also other suggested plans, were there not? A. Yes.

Q. Those included the failure to punch time clock?

A. I don't know. I would have to check that.

Q. We will refresh your memory.

Mr. Weil: Mr. Examiner, I would like to object to that question until—any questioning concerning

(Testimony of Edward McElroy Gardiner.)

actions that were not taken. It seems to me they have no pertinency to the matter under consideration here.

Mr. Holman: Mr. Examiner, I think they do.

Mr. Perkins: The Trial Examiner has previously ruled on the same point.

Trial Examiner Miller: No, not on the particular point with relation to examination as to other types of action proposed by the Action Committee.

Mr. Holman: I would like to point this out. It's been presented here that the Manpower Availability Conference was not necessarily an oppressive action to be taken against the company but simply a form of device used by which engineers could use the Manpower Availability Conference as something of a placement bureau for engineers. And we are by this line of questioning seeking to show that this was just one of a number of allied plans of activity which SPEEA was to engage in, whose sole purpose it was to bring pressure on the company to accede to SPEEA's demand, and this Manpower Availability Conference is one of a line of suggested actions which SPEEA was urged to take, and this goes to question of whether SPEEA intended Manpower Availability Conference solely as a punitive measure or whether as alleged by the other side, that it was possibly a punitive measure, but it was also a sort of a market place or placement bureau for engineering, and that is the purpose of this line of questioning.

Trial Examiner Miller: Objection overruled.

(Testimony of Edward McElroy Gardiner.)

Q. (By Mr. Holman): Calling your attention, Mr. Gardiner, to what purports to be the minutes for the Executive—excuse me—minutes of monthly meeting of June 1952, in which it is stated, "Further move that the committee take under serious advisement the report submitted last September by the committee headed by Gene Williams, by John Lomax, and seconded by Harry Goldie", does that serve to refresh your memory as to the various considerations that were taken under advisement?

A. Yes.

Q. And it states here, does it not, "No overtime refusal to work?" A. Yes.

Q. And Manpower Availability Conference?

A. Yes.

Q. And publication to schools? A. Yes.

Q. And hit and run work stoppages?

A. Yes.

Q. And medical and dental appointments?

A. Yes, sir.

Q. And SPEEA to work, to meet during working hours? A. Yes.

Q. Would you explain to the Examiner, and I wish to be fair on this because this is very abbreviated, explain to the Examiner what these items mean. Let's take the medical and dental appointments.

A. I want to make one statement in this particular case, and that is, as I believe the minutes will show, the Executive Committee expressed its viewpoint that this report was not approved by the

(Testimony of Edward McElroy Gardiner.)

Executive Committee but merely submitted, and, therefore, in the statements that I will be making, I will be stating what it is believed to have been the Action Committee's purposes beyond in writing these items, in preparing these items——

Mr. Tillman (interrupting): I object, then, to any questions [175] of this type, as to what the Action Committee intended.

Mr. Holman: I think this goes to the same point as to the type of thing that is being intended, and it goes to the Manpower Availability Conference.

Mr. Tillman: That witness was not on the Action Committee.

Mr. Holman: He was on the Executive Committee, and this was referred to him as the governing body of SPEEA.

Trial Examiner Miller: The witness has indicated that the report was not approved. However, I assume from your testimony, Mr. Gardiner, that you were present and heard the report.

The Witness: That is correct.

Trial Examiner Miller: The discussions on the report, but not the report.

The Witness: That is right.

Trial Examiner Miller: Objection overruled.

Q. (By Mr. Holman): Taking the medical and dental appointments, was it the intention of the SPEEA members to have certain medical and dental appointments during their working hours which they had to go to instead of work?

A. May I express it my own way?

(Testimony of Edward McElroy Gardiner.)

Q. Sure.

A. From the discussion held I gathered that it was the intention as a proposed action that all members of SPEEA have a dental appointment at a given time. That would be a simultaneous medical or dental appointment. [176]

Q. And the publication to the schools, what would that involve?

A. Publication to the schools, if once again I recall the purpose at that particular time, was to advise schools of the presence of a labor dispute between SPEEA engineers and Boeing management, in order that they might not come to work with Boeing under the misapprehension of labor relations.

Q. No overtime was—refusal to work any overtime on the part of SPEEA, is that correct?

A. That is correct.

Q. And the hit and run work stoppage would be work stoppage in a sporadic nature?

A. That is correct; either sporadic in time or sporadic in terms of departmental.

Q. All these were designed to put pressure on the company, isn't that correct?

A. These are all designed as forceful action, that is right.

Q. This Action Committee was activated in August, was it not, to go ahead with some of these lines of action? A. No.

Q. The Action Committee was activated before August. The Action Committee was a planning com-

(Testimony of Edward McElroy Gardiner.)

mittee. These plans of action by the Action Committee were publicized in your newspaper?

A. Yes.

Q. Calling your attention to what has been identified by Mr. Pearson as proposal for SPEEA's plan of action, signed by the [177] Action Committee, are you familiar with that document?

A. Yes.

Q. You have seen that, haven't you?

A. Yes. This doesn't mean that I can recall it all.

Q. Surely. But you are familiar with that document as produced by the Action Committee and the date is 8/19/1952? That would be August 19, 1952?

A. I would have to pick them off, but I assume that it is.

Q. Reading to you the preface to the proposal for SPEEA's plan of action, in which is stated 'There is no real reason to expect the company's offer to improve materially unless some real pressure is exerted on it. Your Action Committee feels that this pressure must be applied some time, and it might as well be this year. However, Boeing engineers, in general, see no issues worthy of a walkout. 'What then,' is the question so often asked, 'can we do to force Boeing to grant concessions without resorting to a walkout?' The following pages present your Action Committee's draft of a sample plan which would be very likely to produce startling results without one day's absence from

(Testimony of Edward McElroy Gardiner.)

work.' Having read that excerpt, will you state whether or not that was your understanding of this particular document when it came to your attention on the Executive Committee.

A. That it was a draft?

Q. That was the thinking of the Action Committee, was it?

A. Yes. This plan also had not been approved by the Executive [178] Committee in its draft form and also the membership at a quorum meeting directed the Executive Committee to publish this draft.

Q. One of the plans of action suggested by this draft is the Manpower Availability Conference, is it not? A. Yes.

Q. And another activity was stop punching time clocks? A. Yes.

Q. You have made reference to sending publications to colleges as one of the projective plans of action. Is that what is referred to here as "neutralizing the hiring campaign?"

A. That, I believe, is the understanding of the committee, the Action Committee.

Q. Reading from the paragraph which refers to the neutralizing the hiring campaign, it states, "All forms of publicity, such as advertisements in trade magazines, technical publications, and newspapers, news articles clearly defining the situation at Boeing submitted to all media, letters to college and university placement bureaus, letters to high schools and articles in teaching journals to point up those

(Testimony of Edward McElroy Gardiner.)

aspects of Boeing's policies toward engineers which cannot stand public scrutiny. Inasmuch as new hires can obtain practically the same offer from any company if they make the effort, even the small deterrent offered by knowledge of the sources of discontent at Boeing will probably be sufficient to cause them to go elsewhere. Especially vulnerable are the programs of hiring college professors and undergraduates for the [179] purpose of stimulating engineering employment in the future. Meetings with these people in which the disadvantages of employment at Boeing are carefully and forcefully spelled out should do much toward neutralizing this costly program." That is the projected form of activity which is referred to here as your understanding of neutralizing the hiring campaign?

A. That is the understanding of the Action Committee in preparing it, as I understand it.

Mr. Tillman: I move to strike the question and the answer.

Trial Examiner Miller: Overruled.

Q. (By Mr. Holman): Calling your attention to what has been admitted as General Counsel's Exhibit No. 2, you are familiar with this document, are you? A. Yes.

Q. Calling your attention to the statement here, "As a point of interest, however, several companies have been sounded out, and they all have indicated unofficially that they desire to be included". Would you be able to tell us what companies have been sounded out in that respect? A. No.

(Testimony of Edward McElroy Gardiner.)

Q. This was never discussed with you?

A. That is right.

Q. You didn't discuss this with the Action Committee? A. No.

Q. If the company had been able to get together with SPEEA on [180] a contract this conference would have been called off, would it not?

A. Yes, with one understanding, if the company and SPEEA had agreed to a contract which contained provisions as they stood up to the anniversary of the contract, the broad implications of the contract concerning slow downs were such that we felt that the Manpower Availability Conference could possibly be construed as falling outside the realm of the contract, and for that reason we would not have held it.

Mr. Perkins: I am not quite clear on that one. Could we have the answer? I don't want to interject here, but I am just suggesting that the answer be repeated, and then Mr. Gardiner explain a little bit more fully what he means.

Trial Examiner Miller: Let the record be read.

(Answer read.)

Q. (By Trial Examiner Miller): Can you explain your response, Mr. Gardiner?

A. Surely. We would not and did not intend to hold the MAC during the period of the last contract with the company. This was for the reason that we felt that one term in the contract concerning strike slowdowns, sit-downs, et cetera, was so stated in broad enough terms, such that a MAC

(Testimony of Edward McElroy Gardiner.)

convention, the MAC, could be considered to some extent as a slow-down. Therefore, if a contract exists written in that phraseology we would not have held a MAC. [181]

Mr. Perkins: If I may be permitted just to ask, does the Examiner object to my asking just two or three questions for the purpose of clarification? I realize that it is a very desirable practice to confine cross examination to one counsel on each side of the table, but I would like to have the Trial Examiner express himself on that.

Trial Examiner Miller: I would normally request that that procedure be followed, however, since a rather special situation appears to have arisen, and there is no indication that we are letting down the bars, you may proceed at this time.

Q. (By Mr. Perkins): I understood the substance of a previous question to be, if you had consummated a contract with the respondent prior to the date for the Manpower Availability Conference that you would have called off the conference. Am I correct in my recollection?

A. We would not have held the conference.

Q. And then do you mean by the next answer that you would have asked that any new contract contain an approbation of the Manpower Availability Conference as a condition precedent to your agreeing to the terms of a new contract?

A. No. That is one part of the answer. Either we have formed a satisfactory contract with the company in which we feel that the advantages ac-

(Testimony of Edward McElroy Gardiner.)

cruing from that contract are greater to the membership than the disadvantage of not being able to hold such a MAC for all the reasons previously submitted, the purposes of [182] holding such a Manpower Availability Conference.

Q. But you would have insisted upon one or the other?

A. Let us say that that would be in our power to determine. And we would so determine whether it was more advantageous to the membership to sign a contract which we felt would not allow us to hold a MAC in return for other advantages, or the inclusion in the contract phraseology which would permit us to hold the MAC.

Q. You mean before you would have approved a contract with the company you would have insisted either that your economic demands be met or that approbation of the Manpower Availability Conference be written in the contract?

A. Not at all.

Q. I am not trying to confuse you, I assure you. I am trying to get an explanation of what you meant by the other remark.

A. I mean in our evaluation of the offer from the company, an offer, we would have—we would decide at that time whether it was better to sign a contract which would not permit us to hold a MAC in our own opinion, or insist that inclusion be made in the contract which would permit us to do so. I am not saying that all of your demands have to be met, because contracts are finally deter-

(Testimony of Edward McElroy Gardiner.)

mined by compromise and it is a relative matter, and it is one that we have to determine at the time of the contract, the time the contract is agreed on.

Mr. Perkins: I don't intend to pursue these questions any further, Mr. Examiner. [183]

Q. (By Mr. Holman): Mr. Gardiner, in the fall of 1952, you, I believe, testified that you would delay for four weeks the activation of the Manpower Availability Conference until the next meeting, or until the next meeting of the company and the SPEEA, is that correct?

A. The last part of the question I—we stated to the company that in view of the fact that satisfactory negotiations seemed to be occurring, it was our intention to take no overt action on the Manpower Availability Conference for at least four weeks.

Q. At the time those negotiations were going on you did not ask for the Manpower Availability Conference to be put into the contract, did you, at that time?

A. I will have to rely on my memory in that particular case there as to time going on there. I don't believe it was requested during that time.

Q. These actions, including the Manpower Availability Conference, and the refusal to punch time clocks, and these other plans of action which were set forth in the plan of the Action Committee, were all designed to bring pressure on the company without the necessity for a full strike, isn't that correct?

(Testimony of Edward McElroy Gardiner.)

A. Without the necessity for a full strike, you say?

Q. Rather than going out on strike, everybody leaving their jobs?

A. I would say these have been considered as an alternative or as an adjunct to the strike. [184]

Q. If these didn't succeed, you would consider going out on a strike?

A. Or possibly the reverse.

Q. Possibly the reverse? Isn't it a fact that in an executive meeting as late as January 1953, a question of whether the strike should be submitted to the membership was brought up before the Executive Committee and that it was moved that the question of a strike not be submitted to the membership, and that that motion was passed?

A. I believe that to be correct, and if you have the minutes, I can check on that.

Q. Calling your attention to what is here indicated as the minutes of the Executive Committee meeting of January 14, 1953, Hendricks moved to reconsider the full questionnaire, four against two; E.M.G. appealing intent of poll that it should include a strike vote; against, four; for, two. Does that refresh your memory?

A. That refreshes my memory concerning that particular meeting.

Q. There was a question of whether a strike should be submitted to membership.

A. As considered in the meeting of January 14. My reason for answering in that manner is that I

(Testimony of Edward McElroy Gardiner.)

believe there was a preceding meeting in which a vote was made.

Q. A vote was made to—— [185]

A. (Interrupting): In which a strike ballot was to be included.

Q. Explain your answer.

A. May I have the minutes?

Q. Surely.

A. For the year 1952, I have one indication here given in the minutes of a special membership meeting dated November 24 in which the Executive Committee's recommendations concerning the company's offer were that as a result of the "majority report that SPEEA must consider appropriate action such as demonstration, walk-out, MAC suggested as means of showing protest."

Q. That "demonstration walk-out" would be for a day or something like that?

A. That is right.

Q. That is what you referred to as similar to a hit and run stoppage, is that correct?

A. No, not analogous in its entirety.

Q. What was that?

A. A demonstration walk-out in this particular case is one in which a specific time of walk-out is indicated.

Q. That is similar, then, to everybody having a dental appointment at the same time, is that correct?

A. It might be so interpreted. Though, the demonstration walk-out as the members of SPEEA

(Testimony of Edward McElroy Gardiner.)

viewed it was one in which the members in the in the SPEEA classification who were non-exempt, and thereby in leaving the company must punch out, would not have [186] received pay from the company for the period involved in the walk-out. And opinions were exchanged as to the means in which members in the exempt category which must by law be paid for this particular period, means were considered of a manner in which recompense could be made to the company for the time not worked but paid. You see there is a difference in that particular case. A dental appointment might be construed as a legitimate excuse, and this was——

Q. This was an illegitimate excuse?

A. No.

Q. What is the distinction? Both of them are planned, are they not?

A. The dental walk-out, if we want to use the term to describe it, was merely a proposal and it was never one that secured the approval of the Executive Committee.

Q. I see. You were interviewed, were you not, by the Post-Intelligencer in January of this year with respect to the labor negotiations and discontent there between SPEEA and Boeing?

A. Yes.

Q. Reading from what purports to be an excerpt of the Post-Intelligencer for January 6, 195? it is stated, "The Union now is polling members to de-

(Testimony of Edward McElroy Gardiner.)

termine what minimum increase will be accepted, and Union Chairman M. E. Gardiner said they described the minimum offer poll as a strike vote, in essence."

Continuing the quote: "He emphasized the engineers will [187] take all other steps possible before undertaking a walk-out".

Does that state, in substance, what you reported to the newspaper?

A. I don't consider it as such. Now, the quotation section of this, "a strike vote in essence", I believe refers to one poll on the questionnaire which was distributed and then recalled.

Q. You deny that is the purport of your——

A. (Interrupting) I believe this quote that has been made has been lifted out of context and gives a faulty impression, as is many of the publications.

Q. You were also interviewed by Dick Ross, were you not, on or about January 2, 1953?

A. That is right.

Q. On television, and in answer to this question from Dick Ross, "Well, now, what is the next action on the part of your association?" E. M. Gardiner, you are reported to have stated, "We are at this time conducting a poll of our members which should be returned by the end of this month, to allow them to determine whether they should perhaps leave this area or carry on eventually a strike in order to enforce our particular feelings on this issue." Is that a correct statement of what you said, in substance? A. I believe so.

(Testimony of Edward McElroy Gardiner.)

Q. This was before the meeting of the Executive Committee [188] during which the motion to include the strike vote was voted down, is that correct?

A. That is right. In other words, the poll referred to in this particular case is the poll that was recalled on the basis to us of ambiguity, and a second vote was taken by the new Executive Committee which resulted in a decision at that time to not include the strike ballot as part of the poll.

You recognize that this is the chronology of the events.

The Executive Committee voted at one time to submit a poll which did include opinion concerning a strike. This poll was recalled, and the difficulty was of the ambiguity in the poll. We found it very difficult to interpret just what the membership meant by their voting. A second poll was prepared, the new Executive Committee was in attendance and voted on the issues of that poll. At that particular meeting the decision was made by a majority vote to not include the strike issue as a part of the poll.

Q. You dissented in that vote, is that correct, you and Mr. Czarnecki?

Mr. Tillman: I object to the question.

Trial Examiner Miller: I will sustain the objection as to the witness's personal position on the matter unless his personal position is shown to be material.

Mr. Holman: I think it is material, Mr. Exam-

(Testimony of Edward McElroy Gardiner.)

iner, in this respect, and that is it bears upon the question of whether this [189] witness and those on the Executive Committee at the time these actions were planned represented the feeling of the majority of the SPEEA organization.

It is important to show that the thinking of this witness and others in the organization was not reflected, and thereafter other members who felt that some of these actions taken by SPEEA were not for the welfare of SPEEA were elected to office and succeeded them.

In other words, we are pointing out that Mr. Gardiner represents a school of thought in SPEEA which produced these plans of action, which were not approved of by the regular membership.

Mr. Perkins: May we consult for a minute?

Trial Examiner Miller: Very well. Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

At this time I will sustain the objection.

Q. (By Mr. Holman): I believe you testified, Mr. Gardiner, that the overwhelming majority of SPEEA voted to go ahead with the MAC sometime in November. I believe it was November 24, is that correct?

A. I don't recall the timing on that particular one.

Q. At a meeting in that month or near that month, the whole membership was given a chance to

(Testimony of Edward McElroy Gardiner.)

vote on whether the SPEEA organization should now go ahead with MAC, is that correct?

A. No. The vote was taken that a MAC should be conducted at a [190] time to be determined by the Executive Committee.

Q. But that vote was that the MAC should be activated and this was after the four-week delay, was it?

A. That was during the four-week delay, to the best of my memory.

Q. Do you have any record of the size of the majority which passed that motion?

A. No, I don't have any personal recollection. If it isn't in the minutes, I am afraid it isn't available.

Q. You don't recall how many people were at the meeting?

A. No. I believe that that information might be available in the Membership minutes, general membership minutes. But you must recognize that in regular membership meetings that a vote can be taken either by a show of hands or by a standing vote. If a clear cut majority is shown, there is no roll call taken.

Q. In other words, you, yourself, as of right now don't recall what the majority would be?

A. No. This issue has been raised in several meetings, and so I wouldn't wish to rely on my memory on that issue.

Q. You couldn't estimate how many were there?

A. No.

(Testimony of Edward McElroy Gardiner.)

Q. Did you notice if the attendance was indicated?

A. I have looked through the file here. I don't seem to recall the November 24 meeting. I don't seem to find it in here.

Q. The MAC was given publicity in your local newspaper, was it [191] not? A. Yes.

Q. What is the name of that newspaper?

A. The N.P.E.

Q. I wonder if we could have it spelled out?

A. The Northwest Professional Engineer.

Q. To whom was this distributed?

A. The newspaper is distributed to the membership. It is distributed at times to those within the SPEEA representative representation unit.

Q. What do you mean at times?

A. I mean by that that we have on file, on the basis of information supplied from Boeing Airplane Company and other companies, a list for whom we bargain. We separate these in two categories, members and non-members, determined mostly by income and expense we decide whether the distribution should be made only to members or to members and non-members. In addition, we distribute to a courtesy list which includes those members who leave our bargaining group by virtue of promotion or transfer into supervision and other supervisors, by virtue of a listing supplied to us by the Boeing Airplane Company. In addition, a final listing is made of distribution to other bargaining agencies with whom we correspond.

(Testimony of Edward McElroy Gardiner.)

Q. Are they sent outside of the city, when you say "other bargaining organizations"? [192]

A. Yes.

Q. They would be sent nation-wide, would they?

A. Yes.

Q. What was your part in the promotion of the MAC personally, that is?

A. I was Chairman of the Executive Committee.

Q. Did you take any action personally as to the setting up of the MAC or advising with the Action Committee?

A. No. That was the duty of the liaison officer to deal directly with the Action Committee. I also served as spokesman and, therefore, letters concerning the MAC which have been transmitted go over my signature. As an example, the letter to the Boeing Airplane Company concerning the invitation.

Q. The liaison officer, who is he, what is his name?

A. The liaison officer has changed—are you referring to the Action Committee or to the MAC Committee?

Q. Perhaps I am a little confused now. The MAC Committee was a part of the Action Committee, is that correct?

A. No. The way this happened is that the Action Committee was planned for planning purposes only, and those plans which were determined to be useful, or that should be processed further, resulted

(Testimony of Edward McElroy Gardiner.)

in the organization of other committees to take on those specific functions.

Q. The MAC Committee took on the special function of MAC?

A. That is right. [193]

Q. The only thing I am trying to determine now is who is this liaison officer that the Executive Committee worked through in contacting the MAC organization?

A. Good enough. I think I can clarify it in this way: In my belief Mr. Edwin Czarnecki was liaison officer for the Action Committee, the planning function, at the time that the MAC Committee was formed. It is my belief that Mr. Hendricks would near that time become a member of our Executive Committee and served as liaison officer.

Q. Was Mr. Czarnecki on the Executive Committee? A. Yes.

Q. Did he report to you, that is, the Executive Committee, from time to time as to the progress of the MAC?

A. The progress of the MAC planning, yes. You recognize he served as liaison officer for the Action Committee.

Q. Do you know Mr. Rick James?

A. Yes.

Q. Who is he?

A. He is head of the Publications Committee—pardon me—he is at present a member of the Executive Committee of SPEEA.

(Testimony of Edward McElroy Gardiner.)

Q. How long has he been a member of the Executive Committee?

A. Since March of this year.

Q. Did Mr. James have any position in the planning of the MAC?

A. Not to my knowledge. Mr. James was editor of the N.P.E., [194] and served as head of the Publications Committee.

Q. He—N.P.E. is the newspaper, I take it?

A. Northwest Professional Engineer.

Q. Just to summarize a little bit with respect to the area representatives, they were the representatives that the Executive Committee would contact on certain policy and business matters relating to SPEEA?

A. In an informal manner. In other words, I must state it in that way because the Executive Committee was finally determined by a clarification through a constitutional ballot as the sole authority and responsibility for the business of the SPEEA other than that specifically designated in the constitution.

Q. And the Executive Committee would send out notices to the area representatives called news letters, is that correct?

A. It could and did.

Q. And did. Do you happen to know whether such area news letters were sent to the Boeing Airplane Company? A. Yes.

Q. They were?

A. Yes. It was a matter of policy with the Ex-

(Testimony of Edward McElroy Gardiner.)

ecutive Committee from one to me onward to make sure that the company received the same information that our members did.

Trial Examiner Miller: If you are about to pass to a new subject, Mr. Holman, I think this might be a good place to recess for five minutes. [195]

(Short recess.)

Trial Examiner Miller: The hearing will be in order.

Q. (By Mr. Holman): Mr. Gardiner, why was the MAC considered an effective method of putting pressure on the Boeing Airplane Company, at least at the time that it was considered?

A. Considered by myself, do you mean?

Q. Yourself and the general organization, SPEEA organization.

A. I don't believe I can answer for the organization, excepting by a recall to the ballot which was conducted, but the response as shown by discussion in membership meetings, and that as indicated by discussion in the Executive Committee, and that which I, myself, have considered, are all different to a certain degree, and I would like you to ask me which one you would like me to go at.

Q. Where are they similar, let's ask that first? I assume you all have a similar view of the MAC?

A. Surely.

Q. What would that be?

A. It is similar in this regard: that it is the contention generally held by all SPEEA members that the termination rate of the Boeing Airplane Com-

(Testimony of Edward McElroy Gardiner.)

pany is a matter which is of serious consequences to both the SPEEA membership and the Boeing Airplane Company. This was brought out by Mr. Esary at the start of negotiations in which he stated, and I don't intend to quote him directly, that in his consideration a man should work under [196] conditions unless he finds either better conditions elsewhere or intolerable conditions where he is employed, at which time he should leave. This is the form of, you might say, a white or black decision, which is a supposed right of an individual working for an employer to have available to him at all times.

Mr. Perkins: Would you please mark that place in the record?

Q. (By Mr. Holman): You aren't referring to any notes there, are you?

A. No. It is just that you asked how did we—how did I consider and how does the membership consider an activity such as the MAC to be an effective agency.

Q. I am interested in knowing why you thought—perhaps I didn't phrase it too well—why you thought this form of pressure as opposed to other forms of pressure would be successful, what sort of damage that you thought this would be to the company to require them to meet your terms?

A. First of all, I don't believe it is necessary to do damage to someone else to bring about a condition where they must come to your terms.

Q. I am not speaking of physical damage. I am

(Testimony of Edward McElroy Gardiner.)

speaking of damage in the broad sense of pressure or to create an undesirable situation which the company would wish to avoid or do away with and, therefore, meet your demands. That is the sort of damage I am referring to. [197]

A. Once again I say that I believe that sometimes an ameliorating step or action can be taken unilaterally which will create conditions under which the company will recognize that a change should be made. I feel quite definitely a pressure need not be damaging.

Q. What sort of pressure is this?

A. This is the pressure of restored bargaining rights and data. We have considered termination data in these negotiations as most pertinent as an indication of the necessity that the company's wage scales and policies can stand revision to the gain of both.

Q. You mean, by "termination" you mean the termination of engineers in sufficient quantities so that the company could not operate, or at least operate under great difficulty without them, is that correct? A. That is correct.

Trial Examiner Miller: I am not quite sure that I so understood the witness's answer, because he indicates that——

Mr. Holman (interrupting): Let's get it straight. I don't want to put words in his mouth. I am trying to determine the type of pressure.

Trial Examiner Miller: Let the record be read

(Testimony of Edward McElroy Gardiner.)

as to the witness's previous response. I have an observation to make with respect to it.

(Record read.) [198]

Q. (By Trial Examiner Miller): Your previous response at some length has just been read. When you speak of termination data, in that connection are you referring to the rate of turnover of the company's engineers? A. That is right.

Q. The rate at which people leave Boeing's employ under normal circumstances?

A. Under all circumstances.

Q. Under circumstances in regular operation?

A. Correct.

Q. Will you explain for us the reference in that answer to the fact that in your opinion, or in the opinion of SPEEA members, the rate of turnover that has existed at Boeing among engineers is indicative of a need for the revision of the company's wage structure?

A. It is felt in certain regards there is an agreement between the expression made by Mr. Esary, that I have quoted, in which when a man finds a situation intolerable or finds a profit can be made elsewhere, that he should terminate. This, then, means the termination data in itself is a measure to all concerned as to the opportunities existing for the men in our bargaining unit elsewhere, to which they will respond, or also a measure of the intolerableness, to coin the term, of present conditions at Boeing.

Trial Examiner Miller: The witness's last re-

(Testimony of Edward McElroy Gardiner.)

sponse is [199] consistent with my earlier understanding.

Q. (By Mr. Holman): The thing I am trying to determine is whether the MAC was used to accelerate that turnover. Is that correct?

A. There is another thing that has occurred——

Mr. Perkins (interrupting): Can we have a responsive answer on that?

Q. (By Mr. Holman): Answer yes or no, and then qualify your answer. The question was, was this action of MAC designed to accelerate the turnover of engineers at Boeing? A. No.

Q. It was designed for that purpose?

A. No, it was not designed primarily to that end.

Q. You mean by "primarily" that it was in part designed for that purpose?

A. No. I mean that it was recognized that as a secondary aspect that that would occur. This is an opinion, and opinion only. We have no measure to indicate that the termination rate would accelerate as a result of the Manpower Availability Conference. This is based on the supposition that if the men in attending such a conference find conditions to be better at Boeing than elsewhere, there will be no terminations, and, in fact, there will be a cessation of the unrest felt by engineers under the present circumstances, which would benefit Boeing.

Q. Was it anticipated that this MAC was being held at a time [200] when engineers were in short supply?

(Testimony of Edward McElroy Gardiner.)

A. Would you repeat the question?

Q. At the time the MAC was to be held was it felt that engineers were in short supply the country over? A. Yes.

Q. That was a fact, I take it?

A. That was a fact.

Q. Still a fact?

A. That is right, to my belief.

Q. The MAC was not held, was it?

A. The MAC was not held.

Q. It was the opinion of the Executive Committee that one of the reasons why it was not successful was that it possibly violated business ethics, isn't that correct?

A. That was one expression of feeling. I can elaborate on that, if you wish.

Q. Calling your attention to what appears to be News Letter 52, that is a copy of a news letter sent out by the Executive Committee?

A. That is right.

Q. And calling your attention to the paragraph which reads, "The Manpower Availability Conference will not work as an employment means. The possible reasons which are apparent to the majority of the Executive Committee are three: one, participation in the conference may have been considered to violate [201] business ethics." Is that correct? Is that a correct statement?

Trial Examiner Miller: You mean by your question as to whether it is a correct statement as to

(Testimony of Edward McElroy Gardiner.)

whether that correctly reflects the Executive Committee's thinking?

Mr. Holman: I would like to know if I read it correctly, first.

Trial Examiner Miller: Very well.

A. With the indication that it was stated that such reasons were possible, the possible reasons are three, that is not an expression of certainty on the part of the Executive Committee but merely that the possibility exists.

Q. (By Mr. Holman): In addition, the Executive Committee also felt that the action had publicized to other companies the unrest among engineers which existed at Boeing Airplane Company?

A. Yes.

Q. Was it not also reported by the Executive Committee through its news letter with respect to the Manpower Availability Conference, "However, it is encouraging to see recent local newspaper advertisements for engineers by competitive industries, even a member of the A.I.A." Calling your attention to the portion that I have just read here, is that a statement of the feeling of the Executive Committee?

A. That is a statement of the Area Representative Committee, isn't it? [202]

Q. Yes. Is that also a statement of the Executive Committee? I mean was that also their feeling?

A. No.

Q. What is the Area Representative Committee?

A. Would you like the organization?

(Testimony of Edward McElroy Gardiner.)

Q. No, I just wanted to know for the purpose of clarification, because I would like to know whose statement this is.

A. Well, I believe this was covered in testimony.

Q. It very likely was. I just wanted to——

A. (Interrupting): I can't recall that. The Area Representative Committee is a Central Committee, and then has a distributive grouping below it to which information can be passed to individual area representatives for distribution throughout the membership, and this organization is also used for the collection of information, comments and opinions, which are then prepared and printed by the Area Representative Committee. That is the avowed function and the approval of the liaison officer of the executive Committee to which the area representative committee reports, is used only to check against libelous statements. In other words, printing of information signed by the Area Representative Committee does not necessarily mean that those views are agreed to by the Executive Committee.

Q. Is that area representative letter circulated to the membership?

A. Yes. SPEEA is a democratic organization and it feels that [203] the distribution of information is just as important, the distribution of dissent information is just as important as that of affirmative.

Q. This is considered dissent? A. No.

Q. You are not going to say that that is dissent information, or are you?

(Testimony of Edward McElroy Gardiner.)

A. No, I am not. I am just saying that the Executive Committee did not form an opinion.

Q. It has not necessarily been approved by the Executive Committee?

A. That is right, they have not said that that is bad, good, or proper or improper.

Q. You have heard of the "Hungry Hundred"?

A. Yes.

Q. What does that relate to?

A. The term "Hungry Hundred", as I gather it, refers to a group of men very loosely organized, who have assembled for the purpose of discussing problems which they consider to be of importance to SPEEA, and thereby to provide the grass roots organization, to use the term loosely, which can be used for initiating motions or discussions on the floor of regular membership meetings, or directing petitions to the Executive Committee.

Q. A kind of a club within a club, would that be it? [204]

Mr. Cluck: If the Examiner please, I object to this question and the line of inquiry as being immaterial to any issue of concerted activities or otherwise. It goes into the matter, presumably, of some intra-organizational policy forming, whereas a matter of concerted activity and the actions taken by the organization itself are all covered in the official minutes or other evidence. Opening up inquiry as to the "Hungry Hundred" or "Fullsome Forty" might take up a variety of organizational problems.

(Testimony of Edward McElroy Gardiner.)

It enlarges the inquiry here to no useful purpose that I can see.

Trial Examiner Miller: What is the materiality, Mr. Holman, of this exploration of factionalism within the organization?

Mr. Holman: It relates, Mr. Examiner, to the point previously brought out, that the factionalism within this group we will show has proceeded to an extent that the so-called "Hungry Hundred", is a group within SPEEA which is engaged in these various plans which we have just outlined, and which we submit does not have the whole-hearted approval of the total membership, it relates to the same issue which we discussed previously, I believe.

Mr. Tillman: In that event, the General Counsel joins in the objection of Mr. Cluck.

Trial Examiner Miller: I will sustain the objection. Off the record. [205]

(Discussion off the record.)

Trial Examiner Miller: On the record.

Q. (By Mr. Holman): Mr. Gardiner, with respect to your answer to my question as to whether the Manpower Availability Conference would be damaging to the company or not, is it your position that it would not be damaging providing the company met SPEEA's demands? In other words, are you taking the position that if the company had met SPEEA's demands, there would not be a MAC?

A. I would say it this way: That if the company had acceded to the first proposal made by SPEEA, that though the MAC could still have been of use,

(Testimony of Edward McElroy Gardiner.)

and these other uses we have expressed to the members of SPEEA, that the economic reasons in this particular case would not result in damage to the Boeing Airplane Company. The way you have stated your question I find it difficult to follow.

Q. All right. Let me ask you this: If the MAC were successful in luring away several hundred engineers from Boeing, would that be damaging in your estimation to the company?

Trial Examiner Miller: Just a moment. I am going to interpose a consideration at this point on my own initiative.

When this line was begun, it was begun with a question which sought to elicit those aspects of the witness's own opinion which coincided with the opinion of the Executive Committee and the majority of the SPEEA membership as he was aware by virtue [206] of his participation in SPEEA activity.

We are still proceeding within that frame of reference, seeking such aspects of the witness's opinion as he believes to coincide with the official opinion of SPEEA.

Mr. Holman: That is right.

Mr. Cluck: I object further to the form of the question. The question was if SPEEA was successful in luring away several hundred employees from the company, where the witness has made it clear that the purposes of SPEEA were other than that.

Mr. Perkins: I don't think the witness has made that clear at all, Mr. Examiner.

(Testimony of Edward McElroy Gardiner.)

Mr. Cluck: If he hasn't made that clear, it ought to be clear before——

Trial Examiner Miller (interrupting): I think I will permit that to stand. If the record and the question contain an incorrect assumption of the witness's position, he is fully capable of straightening it out. Go ahead.

Mr. Holman: Repeat the question?

Trial Examiner Miller: Yes, with the understanding that we have previously indicated, seeking those aspects of the witness's opinion which coincide, as he understands it, with the official opinion of SPEEA.

Q. (By Mr. Holman): Assuming that the result of the MAC would be to lure several hundred engineers from Boeing Airplane [207] Company, was it considered in the opinion of the Executive Committee and SPEEA generally that that would do damage to the Boeing Airplane Company?

A. This is a rephrasing of the question, because as I had stated beforehand, it was not considered an objective of the MAC to lure engineers away from Boeing. The purpose was to provide conditions of free bargaining so that the engineers might determine their true market value. This market value could be used as data in negotiations with the company to provide a fair measure or degree of the discrepancy existing between the condition of remuneration at Boeing and those of other concerns.

Q. Suppose it was determined that the data showed that Boeing was not competitive with the

(Testimony of Edward McElroy Gardiner.)

rest of the industry, would that do damage to Boeing in the opinion of SPEEA?

A. It would do damage to Boeing if, in the face of this evidence——

Q. (Interrupting): Boeing did not meet SPEEA's demands?

A. Did not propose changes which would ameliorate that condition. The reason I have stated it in that particular manner is that we don't insist that each demand by itself be acceded to. Our policy throughout these negotiations, and I hope it will continue to be, is that of stating a condition as we see it and proposing a solution, and trusting that negotiations will result in a solution which will cure the condition as we see it.

Mr. Holman: That is all I have, Mr. Examiner.

Trial Examiner Miller: Any redirect?

Mr. Weil: A few questions.

Redirect Examination

Q. (By Mr. Weil): Early in your cross-examination, Mr. Gardiner, respondent's counsel read to you from the report of the Action Committee dated 8/19/52. Mr. Holman read you a section from the portion of this document which is entitled "Plan of Action" which started out "neutralizing the hire campaign." He read you another section, that was the first of three items under that section, and he read you the third, "Stop punching time clocks". However, he omitted the second which I propose to read and perhaps you can tell me if that is the feel-

(Testimony of Edward McElroy Gardiner.)

ing of the group. "Two: To encourage engineers to seek more suitable employment elsewhere, a Manpower Availability Conference in which invitations are sent out to several thousand companies employing engineers to send representatives to Seattle at some designated date to interview dissatisfied engineers at Boeing's would have tremendous publicity possibilities as well as to provide a definite service to those engineers who are seeking other employment at that time. Even if such modest goals as 200 engineers pledging to attend such a conference, if only for the purpose of making it a success, and 15 companies responding were attained, such a plan would be considered a success."

Do you consider that that paragraph is also a statement of the thinking of the Action Committee?

A. Yes, quite definitely. I mean Mr. Holman presented one portion of that particular report, and I don't recall whether he stated that this was the sole purpose expressed by the Action Committee.

Trial Examiner Miller: He did not.

Mr. Holman: I did not. We have no objection to this going in.

The Witness: I see.

Q. (By Mr. Weil): You stated that a contract with Boeing would have possibly resulted in calling off the MAC. Was that true right up until the time that the MAC would have been run, or was there a period after which it would not have been run?

A. I believe that the proper term that I used, and I hope I was careful in phrasing this answer,

(Testimony of Edward McElroy Gardiner.)

was that a MAC would not have been called were the contract in existence, because there is one point that we considered important, and that is we recognize that a MAC would take a given length of time to run and should a sufficient reception be given to our invitation, we would be forced thereby to hold such a conference. We were morally obligated to do so. And that meant that if such a conference were held by virtue of reception to these invitations, we would have considered it impossible or improbable that we would have signed the contract with the company unless a specific release for this form of activity were a portion of the contract. So the answer is we would not have called such a conference had [210] there been a contract immediately in view, and it was on this reasoning that we did not start any steps which could be considered by us to be overt in starting the MAC until we felt that a definite impasse existed between Boeing and the SPEEA organization. You must recognize we didn't even allow a license to be applied for until we had by letter ballot determined that the SPEEA organization would refuse an offer made by the company in which the statement was made that this was their ultimate offer.

Q. Mr. Holman mentioned other plans of action under the MAC, it became apparent that other plans of action were considered by the Action Committee. Were any other plans of action which were presented by the Action Committee to the membership or to the Executive Committee ever consummated?

(Testimony of Edward McElroy Gardiner.)

A. The only one that I can recall is increase of publicity and education of the members. Possibly the record will, could, bring up others to my attention, but the——

Mr. Holman (interrupting): I wonder if it could be explained what the reference to the record means? You mean the record of this——

The Witness (interrupting): I'm sorry. The minutes of the Executive Committee meetings, regular membership meetings, news letters, or N.P.E.

Q. (By Mr. Weil): Specifically, were any of the plans of action under the heading of "Neutralizing the hire campaign" in this [211] report of 8/19/52 ever consummated?

A. May I see the recommendations?

Q. I will read them to recall them to you, if you wish.

A. There is one particular section that I would like to look at on that.

Q. "All forms of Publicity such as advertisements in trade magazines, technical publications and newspapers, news articles clearly defining the situation at Boeing submitted to all media, colleges and universities, placement bureaus, high schools, and articles in teaching journals to point up those aspects of Boeing's policies towards engineers which cannot stand public scrutiny."

Trial Examiner Miller: Your question is whether anything was done along those lines?

Q. (By Mr. Weil): Were any of those means consummated?

(Testimony of Edward McElroy Gardiner.)

A. Remembering that the Executive Committee did not approve the wording of this particular report in which the last sentence is the one to which I know the Executive Committee took exception, "which cannot stand public scrutiny", certain of those actions did take place, that is, there have been newspaper items which have appeared concerning the negotiations between Boeing and SPEEA. The words in there about letters written college placement bureaus, quite definitely in order to obtain information on the new hire rates for engineers. Reference was made to some of this material by Boeing Airplane Company, and in furtherance of this point, checks were made with the various college [212] placement bureaus in determining the new hire rates for engineers, and so I think I might say in summary that certain of the actions by themselves proposed by the Action Committee were actually consummated, but not necessarily with the purpose given by that Action Committee report.

Q. (By Trial Examiner Miller) : In other words, the purpose of neutralizing the hiring campaign——

A. (Interrupting) : That is right, has not been an official SPEEA pronouncement approved by a majority of the Executive Committee.

Mr. Perkins: I hesitate to register a comment here in view of the Examiner's question, but it doesn't seem to me that the question of intent is pertinent, and just in the interest of prudently preserving our record, I request that that portion of his remarks relating to the purpose be stricken.

(Testimony of Edward McElroy Gardiner.)

Trial Examiner Miller: I would take it that the matter of intent could be inferred from such testimony of a factual character as the witness adduced as to what was done. However, as I view the issues in the way that the record has developed, I would assume that intent is a material fact, or may be, upon the issues as drawn, and for that reason I will overrule your objection. However, the record does show that you have preserved your objection.

Q. (By Mr. Weil): Did the action recommended by the Action Committee of "stop punching time clocks", was that ever consummated? [213]

A. No. In addition, this question was originally raised because of previous policies which had been made indicating the desire of the membership to discontinue such clock punching. A poll was made of the membership during the negotiations to determine whether such clock punching is still considered as an important negotiation item. The poll indicated that the membership did not so consider, and the company was advised and the item was dropped from the agenda of those items under consideration.

Q. Why did you cease to be Chairman of the Executive Committee? A. I resigned.

Q. Did you resign under any pressure or was it a personal resignation?

Mr. Perkins: What is the pertinency of that question?

Trial Examiner Miller: What is the materiality?

Mr. Weil: Mr. Holman's statements at the time he was pressing the inquiry about the new mem-

(Testimony of Edward McElroy Gardiner.)

bers of the Executive Committee possibly being a manner of voicing the dissatisfaction of the membership with the old Executive Committee, I thought it might be well to point out that the membership did not take the job away from him. He quit the job.

Mr. Holman: It is my understanding the objection was made to my line of inquiry and sustained.

Trial Examiner Miller: That is my recollection. I will sustain the objection at this point. [214]

Mr. Weil: That is all for me.

Recross Examination

Q. (By Mr. Cluck): Mr. Holman inquired as to the reasons elicited why this particular Manpower Availability Conference and the related placement and information procedure had failed. Did you mean to imply that such procedure had been abandoned in any way for the future SPEEA?

A. I did not mean to imply that in any manner.

Mr. Cluck: That is all.

Trial Examiner Miller: Is there any further recross?

Mr. Perkins: No.

Trial Examiner Miller: You may be excused.

(Witness excused.)

Mr. Weil: I would like to call Mr. Frajola.

FREDERICK D. FRAJOLA

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): Would you give us your name and address, Mr. Frajola?

A. Frederick D. Frajola, 1040-20 Northeast, Seattle, Washington.

Q. What is your occupation, Mr. Frajola?

A. I am employed in the engineering department at the Boeing Airplane Company, classified as a designer. [215]

Q. Are you a member of SPEEA?

A. Yes.

Q. Do you hold any office in SPEEA?

A. I am the present Chairman of the Executive Committee of SPEEA.

Q. When did you become chairman?

A. I became Chairman of the Executive Committee of SPEEA in March of 1953.

Q. Did you immediately succeed Mr. Gardiner?

A. Yes.

Q. In the course of your duties as Chairman of the Executive Committee, did you write or cause to be written a letter to Mr. Logan, on or about March 31, 1953? A. Yes.

Mr. Weil: Would you mark this as General Counsel's No. 18?

(Testimony of Frederick D. Frajola.)

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 18 for identification.)

Q. (By Mr. Weil): Showing you what has been marked as General Counsel's No. 18 for identification, is that a copy of the letter which you wrote or caused to have been written?

A. That is correct.

Mr. Weil: I would like to offer this in evidence at this time, and I would like to suggest a stipulation that it is a true copy of the letter which was sent. [216]

Mr. Perkins: Could we go off the record a minute, Mr. Examiner?

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record. The pending question is as to whether the suggested stipulation that General Counsel's 18 is a true and correct copy of the letter that was sent and received——

Mr. Perkins (interrupting): There is no objection to the introduction of it.

Trial Examiner Miller: Very well. Mr. Cluck, any objection?

Mr. Cluck: No objection.

Trial Examiner Miller: Very well. There being no objection, General Counsel's Exhibit 18 will be received.

(Testimony of Frederick D. Frajola.)

(The document heretofore marked General Counsel's Exhibit 18 for identification, was received in evidence.)

[See page 515.]

Mr. Weil: Would you mark that 19?

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 19 for identification.)

Q. (By Mr. Weil): Did you receive a reply to that? A. Yes.

Q. Is this the reply?

Mr. Perkins: The date of that? [217]

Mr. Weil: April 7.

A. This is the reply.

Mr. Weil: I would like to offer General Counsel's No. 19.

Trial Examiner Miller: Since the colloquy between counsel earlier in the hearing with respect to the document, General Counsel's Exhibit 19, indicates that there is no objection, and since I hear none, General Counsel's No. 19 will be received in evidence.

(The document heretofore marked for identification as General Counsel's Exhibit No. 19, for identification, was received in evidence.)

[See page 517.]

Q. (By Mr. Weil): Mr. Frajola, after you took over the chairmanship of the Executive Committee, had at that time the MAC as it was planned been dropped?

A. The MAC as it had been planned previous

(Testimony of Frederick D. Frajola.)
to my becoming the chairman of the Executive Committee has been dropped, yes.

Q. As far as the Executive Committee is concerned, is the plan of a MAC or conference similar to a MAC now a dead issue?

A. No. There is an active committee presently working within the SPEEA organization with the same idea in mind, that is, to act more or less as a placement bureau for those engineers that desire to leave Boeing, or as an employment agency to seek places or job opportunities for those engineers desiring to leave.

Mr. Perkins: We have no questions. And I might say that [218] Mr. Frajola is here under a subpoena duces tecum that was issued under our application, and that subpoena is discharged as far as we are concerned, and I assume Mr. Frajola will want to remain, but as far as we are concerned, he is excused.

Cross Examination

Q. (By Mr. Cluck): That last service that you speak of, is that confined to Boeing employees only, or is it open to all members of SPEEA?

A. It is open to all members of SPEEA.

Q. Irrespective of the employer that each has?

A. Yes.

Mr. Cluck: That is all.

Cross Examination

Q. (By Mr. Perkins): You represent—when I say "you" I mean SPEEA—you, Mr. Frajola, you

(Testimony of Frederick D. Frajola.)

represent employees at what other concerns, firms?

A. We represent employees at the Boeing Airplane Company, and at Continental Can Company. However, there are SPEEA members that leave the Boeing Airplane Company and still retain their membership within SPEEA.

Q. You are a certified collective bargaining agent only with respect to Boeing Airplane Company, Seattle Division, and the Continental Can?

A. That is correct.

Q. Can you tell us approximately the number of SPEEA members [219] that are employees of Continental Can?

A. I think it is 17, approximately.

Q. Have you any information as to the approximate number of employees that were SPEEA members and were employees of Continental Can during the fall of 1952 and this much of 1953?

A. I don't have that information.

Q. Do you have any information that would permit you to make an approximation or estimate?

A. No.

Mr. Perkins: That is all.

Trial Examiner Miller: Is there anything further?

Mr. Weil: Nothing further.

Trial Examiner Miller: You may be excused.

(Witness excused.)

Mr. Weil: May we have a very short recess?

Trial Examiner Miller: We will recess for five minutes. (Short recess.)

Trial Examiner Miller: On the record.

Mr. Weil: General Counsel rests.

Trial Examiner Miller: On the basis of the discussion off the record before the General Counsel indicated his intention to rest, it is my understanding that the respondent company wishes some period of time to go through its files in order to determine which portions of the correspondence between SPEEA [220] and the company it wishes to adduce as part of its case in chief. Is that correct, Mr. Perkins?

Mr. Perkins: That is correct.

Trial Examiner Miller: On that understanding I will not at this time suggest that the respondent company proceed, but instead we will recess until 9:30 a.m. tomorrow morning.

(Whereupon, at 4:10 o'clock, p.m., Wednesday, June 24, 1953, the hearing was adjourned until tomorrow, Thursday, June 25, 1953, at 9:30 o'clock, a.m.) [221]

Trial Examiner Miller: The hearing will be in order.

Mr. Perkins: May I address the Examiner?

Trial Examiner Miller: Surely.

Mr. Perkins: It is my recollection that evidence adduced by the General Counsel in connection with the alleged issue, or the point made by the General Counsel as to the nature of the impasse was subject to an objection made by the respondent on the grounds of its relevancy and materiality, the contention being that such evidence is beyond the issues of this case.

It is my further recollection that the Trial Examiner overruled the objection subject to a later motion to strike on the part of the respondent.

Does that sufficiently summarize the nature and type of evidence to which I refer? Simply to refer to it as the evidence relating to the nature of the impasse?

Trial Examiner Miller: I think so. I have the portion of the record in mind.

Mr. Perkins: Respondent now moves to strike such evidence in response to the Trial Examiner's previous remarks that the previous motion of the respondent was overruled subject to a later motion to strike.

Trial Examiner Miller: I have given some consideration to the problem since announcing that ruling and since hearing the evidence. Before I announce my disposition of it, my present [224] thinking, I will ask if General Counsel has any observation.

Mr. Perkins: Am I correct in stating the nature of the ruling, Mr. Examiner?

Trial Examiner Miller: Yes, you are correct.

Mr. Weil: The General Counsel has nothing more to say than he has said before, that he considers this as highly pertinent background to the issues formulated by the complaint and answer.

Trial Examiner Miller: As I now view the problem with which we appear to be confronted in this proceeding, there appears to be a number of ways of formulating it, depending upon the point of view of the person addressing himself to the issue. One

such way that has occurred to me is the formulation suggested by General Counsel's representatives as to whether we have here a protected form of concerted activity, the challenge to which by the respondent poses an issue under the Act. Another way of looking at it is, perhaps, the formulation with which students in the field of labor relations law are familiar, namely, the question of whether or not we have a type of conduct on the part of Mr. Pearson and SPEEA inflicting what has been spoken of in this hearing as legal damage upon the respondent, whether or not there has been actual damage, for which any justification could be assumed to exist. Presumably, the concept of justification for the infliction of damage would be roughly to the concept of a protected, concerted activity in the field of labor relations law. [225]

As I thought about the problem, it occurs to me that the evidence which has been adduced as to the circumstances under which the impasse developed, the particular nature of the impasse, may have a bearing upon further consideration, on the question of whether or not the concerted activity, with which we are here concerned, was protected, concerted activity, or looking at it from the other formulation, it may have a bearing upon the question of whether or not any legal justification existed for the type of action taken by Mr. Pearson, the MAC committee and SPEEA. On that view of the situation, which, of course, is only tentative at this point, and depending upon my further study of the record, but on the view of the situation that I have

expressed, I can see a ground of relevancy and materiality here, and the motion to strike will be denied.

Mr. Perkins: Another matter, upon reviewing my notes last evening of the testimony and remarks that were made in yesterday's session, it occurred to me that the impression that might be drawn from some certain remarks that I made could possibly be an erroneous impression, and I ask leave of the Trial Examiner for an opportunity to attempt a correction with respect to those remarks.

Trial Examiner Miller: Surely.

Mr. Perkins: I am referring to the objection made by respondents, and the reasons given by respondent in connection with the materiality of the testimony adduced, or the statement made [226] by Mr. Gardiner with respect to certain purposes and intentions of SPEEA, and the group that was involved in the Manpower Availability Conference, and I intended at the time, certainly had it in mind, to confine my remarks as to the materiality to the type of statement that in respondent's view is a statement in the nature of a self-declaration of a subjective attitude. I want to negative any impression that my remarks might have conveyed, that respondent does not regard the intention and purpose of SPEEA in connection with the Manpower Availability Conference as a proper issue before the Board based upon the objective evidence in the record in this case.

Trial Examiner Miller: Yes. Very well. With

that explanation I think I understand respondent's position.

Mr. Perkins: And the Trial Examiner is aware of the remarks to which I am referring?

Trial Examiner Miller: Yes.

Mr. Perkins: The next item I would like to take up with the Trial Examiner is the matter of the form of our answer, and I am addressing these remarks strictly to the matter of pleading.

There are some comments made by the Trial Examiner on the first day of this hearing relating to the matter in respondent's answer on the fifth page thereof, under the heading "Further Grounds of Defense".

I am not sure that I understood the intended purport of [227] those remarks, where reference was made by the Trial Examiner in that connection to what was referred to as the St. Petersburg Times publishing case.

I would like to invite attention to the fact that the case to which reference was made is a case that was determined on the basis of the National Labor Relations Act prior to the amendment of the Labor Management Relations Act of 1947. And the difference there is that prior to those amendments there was no section in the nature of 8 (b) (3) as it now appears in the statute, and after the amendment the statute contained such a provision.

The point that respondent is bringing before the Trial Examiner and the Board in connection with the defense that I have mentioned is that it is respondent's contention that there was a violation of

Section 8 (b) (3) on the basis of the actions and statements of the charging union here in connection with the activities of the Manpower Availability Conference, and that thereby in accordance with respondent's view the activities which were in connection with that Manpower Availability Conference were illegal, illegal as being in violation of Section 8 (b) (3).

Now, I am of the impression that allegations such as are contained in the answer under the heading that I have mentioned are perhaps unnecessary and that the contention that I have just mentioned is available to respondent under the broad denial of any violation of 8 (a) (1).

Trial Examiner Miller: I would so assume. [228]

Mr. Perkins: But mindful of the rules of the Board which request at least that respondent state fully its grounds of defense, that language was inserted in respondent's answer in the interest of making the answer complete, and in the interest of prudent pleading. I think it is entirely possible under the present statute for there to exist perhaps simultaneously a violation of Section 8 (a) (5) and a violation of Section 8 (b) (3). That circumstance was, of course, impossible under the Act prior to the amendment. I don't think that there is any necessary interrelationship as a matter of law between Section 8 (b) (3) and Section 8 (a) (5), and we—and our intention and purpose in pleading as we did was to bring before the Trial Examiner and the Board the point that within respondent's view the actions of SPEEA which are of record in this

case, and will be of record at the completion of the case, constituted a violation of Section 8 (b) (3), therefore constituted an illegal act, and we are mindful of the situation that some writers have referred to as a conflict in the opinions of the several courts of appeal with respect to whether concerted activities are to be tested from a standpoint of protection on the basis of indefensibility or on the basis of legality. That completes my statement.

I wanted to be assured that the issue we intended to present is understood by the Trial Examiner.

Trial Examiner Miller: I understand the issue. Nothing that I said in regard to the respondent company's grounds of [229] defense to which you have just addressed yourself was intended in any way to strike that ground from the case. The defense is entirely available to the respondent and my remarks which impelled you to make the observations, were addressed merely to the question of the manner in which the issue was posed and not to the substance of the contention. The substance of the contention is one which may very properly be called to my attention and to the Board's attention.

Mr. Perkins: Thank you.

JAMES D. ESARY

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Perkins): Will you state your name?

(Testimony of James D. Esary.)

A. James D. Esary.

Q. And what is your present occupation, Mr. Esary?

A. I am labor relations manager, Boeing Airplane Company.

Q. And you have been employed by Boeing Airplane Company how long?

A. Approximately seven and a half years.

Q. And you have been in the Boeing Airplane Company labor relations division ever since that time? A. I have.

Mr. Perkins: With the Trial Examiner's permission I am going to refer to it as Boeing. [230]

Trial Examiner Miller: Yes.

Q. (By Mr. Perkins): And you were so employed prior to the time that SPEEA was certified as a collective bargaining agent at Boeing?

A. That is correct.

Q. In what year was SPEEA so certified?

A. 1946.

Q. And the certification that you refer to was pursuant to a consent election?

A. That is right.

Q. Will you describe in a general way the unit then represented by SPEEA and the changes in the unit that have taken place since?

A. Well, originally the unit consisted of the engineering department of Boeing. Later, through a series of consent elections, they took over the tooling engineers, the chemists, the statisticians, and

(Testimony of James D. Esary.)

there may be other small groups. I don't remember at the moment.

Q. And you are familiar with the bargaining negotiations that have taken place since the original certification? A. I am.

Q. And you participated in all of those negotiations?

A. Yes, I did. I might have missed a meeting once in a while.

Trial Examiner Miller: Just in order that the record may be clear, since the pleadings indicate that Boeing has plants [231] both in Seattle and in——

Mr. Perkins (interrupting): I was going to explore that with another witness. I have previously assured the Trial Examiner that I would.

Trial Examiner Miller: Very well.

Q. (By Mr. Perkins): Previous to 1952 the negotiations each year, including and after the year of original certification, resulted in the consummation of a collective bargaining agreement between the parties? A. That is right.

Q. Have there been any work stoppages during that period?

A. There have not as far as SPEEA is concerned.

Q. To your knowledge, the relationship between the parties has otherwise been an amicable rela tionship during that period?

A. I would say they have.

Q. What was the date that the old contract went

(Testimony of James D. Esary.)

out of existence? I am referring to the contract that was in effect for a portion of the year of 1952.

A. That would be in August, 1953, August 21, I believe.

Q. 1952, you mean?

A. 1952, yes. Excuse me.

Q. Except for the increase of March 12, 1953, the conditions of the old contract have continued since the date of its consummation and down to the present time? A. That is right. [232]

Q. Can you tell us the approximate number of employees in the collective bargaining unit represented by SPEEA at the Seattle Division of the Boeing Airplane Company?

A. Approximately 3500.

Q. This was true also, approximately, during the period of the 1952 negotiations and down to the present time?

A. Yes.

Q. Did the company regularly receive from SPEEA the SPEEA newsletters and newspapers?

A. Yes, we did.

Q. This was a matter of regular practice between the parties? A. That is right.

Q. As to the increase of March 12, 1953, this increase was mentioned in correspondence between the company and SPEEA in the period prior to the date of the increase? A. Yes, it was.

Mr. Perkins: I would like to have these marked for identification as Respondent's Exhibit 1 through 21, inclusive.

(Testimony of James D. Esary.)

(Thereupon the documents above referred to were marked Respondent's Exhibits 1 through 21, inclusive, for identification.)

Mr. Perkins: I am willing to lay the foundation and offer these separately, or permit General Counsel's representatives to examine all the exhibits at the present time and make my offer an inclusive offer or collective offer, whichever is preferred or indicated by the General Counsel. [233]

Mr. Tillman: We can probably stipulate to the identity of most of them by looking at them.

Trial Examiner Miller: Very well.

Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Mr. Weil: General Counsel is willing to stipulate that these letters were sent and received as indicated.

Mr. Perkins: May I identify them in the record first?

Trial Examiner Miller: Surely.

Mr. Perkins: I think it would expedite it if I was to identify these letters on the record as to the writer and the addressee and as to the date, and as to any other characterizations that are generally indicative of the letter. If General Counsel is agreeable to that procedure, I think it might expedite it instead of having the witness testify.

Trial Examiner Miller: I think I prefer it that way, inasmuch as there is a stipulation offered that the letters were sent and received, as their dates

(Testimony of James D. Esary.)

and salutation would show. I think you can go ahead on that basis, Mr. Perkins.

Mr. Perkins: Respondent's Exhibit 1 for identification is a letter from SPEEA to respondent dated April 2, 1952.

Respondent's Exhibit No. 2 for identification is a letter from respondent dated April 3, 1952, to SPEEA.

Respondent's Exhibit 3 for identification, a letter dated [234] June 27, 1952, from respondent to SPEEA.

Respondent's Exhibit 4 for identification, a letter dated July 10, 1952, from SPEEA to respondent.

Respondent's Exhibit 5 for identification, a letter dated August 25, 1952, from SPEEA to respondent.

Respondent's 6 for identification, a letter dated July 21, 1952, from SPEEA to respondent.

Respondent's Exhibit No. 7 for identification, a letter dated July 24, 1952, from respondent to SPEEA.

Respondent's Exhibit No. 8 for identification, a letter dated September 3, 1952, from respondent to SPEEA.

Respondent's Exhibit No. 9 for identification, a letter dated November 20, 1952, from respondent to SPEEA.

Respondent's 10 for identification, a letter dated December 20, 1952, from SPEEA to respondent.

Respondent's 11 for identification, a letter dated December 26, 1952, from respondent to SPEEA.

(Testimony of James D. Esary.)

Respondent's 12 for identification, a letter dated January 5, 1953, from SPEEA to respondent.

Respondent's 13 for identification, a letter dated January 7, 1953 from respondent to SPEEA.

Respondent's 14 for identification, a letter dated January 29, 1953, a letter from respondent to SPEEA.

Respondent's 15 for identification, a letter dated February 6, 1953, from SPEEA to respondent.

Respondent's 16 for identification, a letter dated February 11, 1953, from respondent to Mr. Charles Robert Pearson.

Respondent's 17 for identification, a letter dated March 6, 1953, from SPEEA to respondent.

Respondent's 18 for identification, a letter dated March 12, 1953, from respondent to SPEEA.

Respondent's 19 for identification, a letter dated April 8, 1953, from SPEEA to respondent.

Respondent's 20 for identification, a letter dated April 15, 1953, from respondent to SPEEA.

Respondent's 21 for identification, a letter dated May 6, 1953, from respondent to SPEEA.

Respondent proposes to stipulate that these letters marked for identification as Respondent's Exhibits 1 through 21 be admitted in evidence, and that it be further stipulated that the letters were sent by the party indicated thereon in each case and were received by the addressee indicated thereon in each case, and that there will be no objection made wherein some instances an original is not the exhibit offered, but rather a copy is offered,

(Testimony of James D. Esary.)

not as part of the stipulation but as a reservation on the part of the respondent. This offer is, of course, subject to the objections previously made by respondent with respect to the materiality or relevancy of evidence adduced in General Counsel's case in chief with respect to the evidence adduced by General Counsel, said by General Counsel to bear on [236] the point of the nature of the impasse.

Trial Examiner Miller: Very well. Is the stipulation suggested agreeable to the other parties?

Mr. Weil: It is agreeable, except insofar as the offer which refers to the objections made by respondent yesterday.

Trial Examiner Miller: I take it that as the offerer, Mr. Perkins is not imposing an objection to his own offer, that he is merely indicating for the record that the reason he is offering the counter line of testimony which was introduced over an objection.

Mr. Perkins: I am simply saying, in effect, that there is no intention to waive our previous position in offering this evidence.

Mr. Weil: Then we will accept the stipulation.

Mr. Cluck: It is agreed.

Trial Examiner Miller: Very well, pursuant to a stipulation which is noted for the record, Respondent's Exhibits 1 through 21, inclusive, will be received in evidence.

(Testimony of James D. Esary.)

(The documents heretofore marked Respondent's Exhibits Nos. 1 through 21, inclusive, were received in evidence.)

[See pages 519-550.]

Q. (By Mr. Perkins): In referring to the letters from the company to SPEEA of December 26, 1952, and January 7, March 2, and March 12, of 1953, and also to the letters from SPEEA to the company dated January 5, 1953, February 6, 1953, and March 6, 1953, are those the letters to which you refer? [237] A. Yes.

Q. The increase that is mentioned in the complaint was in effect March 12, 1953?

A. Yes, that is correct.

Mr. Perkins: Would you mark that for identification as Respondent's Exhibit 22?

(Thereupon the document above referred to was marked Respondent's Exhibit No. 22 for identification.)

Q. (By Mr. Perkins): Submitting for your examination what has been marked for identification as Respondent's Exhibit 22, will you describe the exhibit for identification?

A. Well, this was a notice attached to all the checks that went out to the members of the SPEEA bargaining unit. The first check, which reflected the six per cent increase.

Mr. Weil: No objection.

Q. (By Mr. Perkins): As I understand your statement, this notice was attached to every check that was sent to an employee in the collective bar-

(Testimony of James D. Esary.)

gaining unit represented by SPEEA, which, referring to the check, first reflected the increase of March 12, 1953, to which you previously referred?

A. That is correct.

Q. Such a check and such a notice was sent to every employee in that unit at that time?

A. That is right.

Mr. Perkins: Respondent offers what has been marked for [238] identification as Respondent's Exhibit No. 22.

Trial Examiner Miller: I understood there was a previous indication that there was no objection.

Mr. Weil: That is correct.

Trial Examiner Miller: Very well. Respondent's Exhibit 22 will be received.

(The document heretofore marked Respondent's Exhibit No. 22 for identification, was received in evidence.)

[See page 550.]

Q. (By Mr. Perkins): On the matter of the increase, and in the period prior to the time that it was placed in effect, was it discussed in negotiations between the parties in addition to which mention was made in the exchange of correspondence?

A. It was.

Q. As to the amount of the increase, was it less than the amount of the increase that had been requested by SPEEA? A. It was.

Q. Since Mr. Pearson's discharge and reemployment, will you briefly describe the situation as to the contract negotiations between the parties?

(Testimony of James D. Esary.)

A. Well, there has been one or two negotiation meetings, and then since the new executive committee has come into office there have been several informal meetings by a part of the executive committee in my office covering various subjects. We were told by these gentlemen that they were preparing a proposal to the company and would request negotiations at a later date. [239]

Q. What is the situation at the present time?

A. At the present time we received last week a letter from SPEEA negotiating committee requesting meetings. As a matter of fact, they requested a meeting this week. I have informed them we will hold such a meeting as soon as we can after this hearing is completed.

Q. Mr. Esary, what is the suggestion system? What is referred to as the suggestion system of the Seattle Division of the Boeing Airplane Company?

A. Well, we have a system down there where certain employees may make suggestions to the company for improvement of, oh, practices or manufacturing methods, tools, so forth, and if these suggestions are accepted, monetary awards are given to the individual to repay him for the value the company may receive out of such a suggestion.

Q. Does SPEEA participate in the suggestion system at the present time? A. They do.

Q. How long has that been true?

A. Well, for a long time the so-called non-exempt SPEEA engineers participated. The exempt engineer was not eligible for participation.

(Testimony of James D. Esary.)

But during the course of our negotiations SPEEA requested that the exempt engineers be included, and that now has been done, they are now eligible for the suggestion system.

Q. How did that develop? [240]

Trial Examiner Miller: Before we pursue the matter further, I would like to just clear up one little side issue for the record.

Q. (By Trial Examiner Miller): Since the concept of an exempt classification and non-exempt classification has now appeared in our record, both in testimony and in exhibits, would you please——

Mr. Perkins (interrupting): I will attempt the statement and determine whether General Counsel is in agreement.

Trial Examiner Miller: Very well.

Mr. Perkins: The distinction drawn in referring to exempt and non-exempt employees is the same distinction that is drawn in the Fair Labor Standards Act.

Trial Examiner Miller: Is that the understanding of the General Counsel?

Mr. Weil: I am informed that is fair enough.

Trial Examiner Miller: Very well. It is so stipulated, then, gentlemen.

Mr. Cluck: Yes, that is substantially correct.

Mr. Weil: Yes.

Trial Examiner Miller: The stipulation is noted for the record.

Q. (By Mr. Perkins): The SPEEA collective

(Testimony of James D. Esary.)

bargaining unit contains both exempt and non-exempt employees? A. That is right.

Q. Will you tell us, will you describe the development that [241] you have just mentioned, how it came about, and what was done by the company with respect to placing the so-called suggestion system in effect? And I wish in that description you would also identify the approximate time, if you recall.

A. Well, as I stated, SPEEA during the course of negotiations requested that the exempt engineers be included in that suggestion system and be allowed to participate in monetary awards for suggestion that they might make. The company considered that and then we rewrote the management procedure which covered the suggestion system, and changed it sufficiently to allow the exempt engineers to be eligible to participate. That was effected——

Q. (Interrupting) Was the action taken, to the best of your knowledge, in accordance with the SPEEA request?

A. Yes, it was a result of their request.

Q. What are we talking about in terms of possible remuneration in connection with the system?

A. Do you mean to an individual?

Q. To an individual, yes.

A. I don't think that there is any limit placed on the amount. I happen to be familiar with one case where an individual received something over $2,000, approximately $2,500, as I remember it, for one suggestion.

(Testimony of James D. Esary.)

Q. In the period immediately after Mr. Pearson's discharge, how was the matter of the discharge handled between the parties [242] as a matter of negotiation or as a grievance?

A. SPEEA started out making it a matter of bargaining negotiations. Then shortly after that time we were informed that they had decided to take it out of the bargaining classification and handle it as a grievance.

Q. How were you so informed?

A. We were informed in a negotiation meeting.

Q. By whom, do you recall?

A. Mr. Gardiner, I believe.

Q. About when did that occur, Mr. Esary?

A. I believe it was in the meeting of February 6, we discussed that and then agreed to have other conferences on it, which we did, with sub-committees of SPEEA.

Q. That situation, I am referring to the agreement of the parties to treat this matter as a grievance, remained true up until the time of and subsequent to Mr. Pearson's reemployment?

A. That is correct.

Q. (By Trial Examiner Miller): I believe a few moments ago, Mr. Esary, you were about to say what your best recollection was as to when the extension of the suggestion system to exempt employees in the SPEEA bargaining unit became effective.

A. My memory is, Mr. Examiner, it took several months to rewrite the procedure and so on, and so

(Testimony of James D. Esary.)

forth, and I believe it was made effective and announced some time in March of '53.

Trial Examiner Miller: All right. [243]

Q. (By Mr. Perkins): When was company action initiated on it?

A. The company action was initiated on it, oh, at least some three months before.

Q. What is the explanation for the interval of three months?

A. Well, we have a management procedures committee down there. Our division recommended that there people be made eligible for the suggestion system. Another division of the company is responsible for writing management procedures and receiving approval of them, and it took them that length of time to get around to rewriting and getting the necessary approvals and issue it.

Q. I am submitting for your examination General Counsel's Exhibit No. 19, which is a letter dated April 7 from the company to SPEEA and it indicates that you are the individual that signed the letter on behalf of the company. Is that correct?

A. Yes, sir, that is right.

Q. The statement in the last paragraph as of that letter is as follows: "On March 17 Mr. Pearson was reemployed pursuant to the offer set forth in our letter of March 2, quoted above. On its own initiative the company restored his company service, sick leave, accumulated before termination, his extended vacation eligibility, and applied the six per

(Testimony of James D. Esary.)

cent increase for time worked retroactively to July 1, 1952."

Will you explain how the restoration of those items developed, Mr. Esary?

A. Well, in our conferences with SPEEA regarding Mr. Pearson, [244] they were principally addressed to the position of the parties regarding Mr. Pearson's actions, and to what would be Mr. Pearson's status when he returned to the payroll, in other words, how he would be treated.

Q. Were these items that were mentioned in the letter important subjects of discussion at these conferences?

A. I was coming to that. These items were not brought up. When Mr. Pearson decided to return to the payroll, we considered the matter, and having no animosity towards him, we decided that we would restore those privileges which he had accumulated prior to his termination, and proceeded to do so.

Q. You were not present on the occasion of Mr. Pearson's discharge on January 27, 1953, were you?

A. I was not.

Q. But you are acquainted with the fact that SPEEA executives immediately thereafter requested bargaining with the company on the matter? A. I am.

Q. And the company responded by expressing its willingness to have a meeting on the matter?

A. That is right.

(Testimony of James D. Esary.)

Q. And you were in attendance at these meetings subsequent to the discharge?

A. I was.

Q. Will you state very briefly the substance of the discussions [245] and the respective positions taken by the parties in these discussions?

A. SPEEA took the position that Mr. Pearson's actions and the MAC were proper courses of action, ethically correct and they saw no reason why they shouldn't have proceeded with it. The company took the diametrically opposite position that the course of action was not ethical, it was not proper, that it was not a protected activity. There was a lot of discussion back and forth, but neither party was able to convince the other and the positions were not changed.

Q. How many meetings do you recall in which this matter was discussed by the parties at which you were in attendance?

A. I recall three. There was one where the subject was discussed in a formal negotiation meeting. There were two other meetings held with, as I say, sub-committees of SPEEA in Mr. Logan's office, at one of which Mr. Logan was present and the other I conducted.

Q. On the subject of the Manpower Availability Conference, was information communicated to you by SPEEA as to the responses that SPEEA had received in reply to the twenty-eight hundred some odd letters that were sent out over Mr. Pearson's signature to other employers around the country?

(Testimony of James D. Esary.)

A. There was.

Q. Who gave the information to you and how was it communicated?

A. Mr. Gardiner called me on the telephone.

Q. That was approximately when?

A. That was sometime in February of '53.

Q. Will you state the substance of that conversation?

A. Yes. He told me that they had sent out 2800 or, I believe, approximately 2800 invitations. That around 100 of them had been returned to them for lack of proper address and that they had received 12 replies.

Q. (By Trial Examiner Miller): Do you recall whether this telephone call was before or after the first meeting which you described as a negotiation meeting in which the question of Mr. Pearson's discharge was discussed?

A. That I believe was after that meeting.

Trial Examiner Miller: Very well.

Mr. Perkins: You may examine.

Cross Examination

Q. (By Mr. Weil): Mr. Esary, your position is labor relations manager, is that correct?

A. That is correct.

Q. What are your duties in that position?

A. It is my responsibility to negotiate all union contracts and administer those contracts, handle all employee complaints, responsibility for employee

(Testimony of James D. Esary.)

relations generally, and whatever else comes along under those broad terms.

Q. In the matter of this wage increase, what was the purpose, if you can tell us, of the company instituting that wage increase? [247]

A. The reason that we instituted it?

Q. Yes.

Mr. Perkins: I object to that, Mr. Examiner. It seems to me that that is even outside the scope of the Examiner's ruling. I object to it on the grounds of its materiality and relevancy.

Mr. Weil: Inasmuch as the unilateral wage increase is one of the matters complained of in this case, I fail to see how the purpose of the company in the instituting of that unilateral wage increase could be considered anything but pertinent.

Mr. Perkins: In view of counsel's statement, I will withdraw the objection.

Trial Examiner Miller: Very well.

A. The question was, I believe, what was the purpose of the company instituting that?

Q. (By Mr. Weil): Correct.

A. The reason we instituted the six per cent was simply that on the basis of national information that had come to us from various sources showing the average hiring in rate of college graduates, we found that we were approximately six per cent low in our offering, so knowing that the spring hiring campaign was coming up, our recruiting teams were ready to go out to visit the colleges, we felt that it was absolutely a business

(Testimony of James D. Esary.)

necessity to raise our rate by six per cent to become competitive if we were to be able to hire any of the graduating class or classes, rather, of the colleges around the country. Of course, it would [248] be bitterly unfair to hire a new man in at a rate that was higher than the man you had hired the month before, so therefore we extended the six per cent right up the line.

Q. At the same time that you instituted this increase did you institute the increase in overtime?

A. Yes. We put in the so-called Lockheed formula.

Q. Could you explain what the Lockheed formula is? Is there a simple explanation?

A. Yes.

Trial Examiner Miller: Referring to Respondent's 22.

Mr. Weil: Thank you.

Q. (By Mr. Weil): Was that increase in overtime made retroactive?

A. It was made retroactive to January 2, 1953.

Mr. Weil: Mr. Examiner, may we have a short recess?

Trial Examiner Miller: Very well, we will recess for five minutes.

(Short recess.)

Trial Examiner Miller: The hearing will be in order.

Mr. Perkins: I am under the impression that my continuing objection as to the line of testimony on the matter of the nature of the impasse of the

(Testimony of James D. Esary.)

bargaining evidence up to the time of the discharge of Mr. Pearson is irrelevant and immaterial, and by withdrawing my objection I didn't understand that I was waiving a continuing objection.

Trial Examiner Miller: Yes. [249]

Q. (By Mr. Weil): Mr. Esary, you discussed the suggestion of extension of the suggestion system, to these engineers. Can you recall in what manner this suggestion was brought up by SPEEA?

A. Well, it was part of a discussion of all the various conditions that apply at Boeing for engineers. My memory is that SPEEA had made us a proposal that they be allowed a pool of 20 per cent of the so-called incentive plan at Boeing to be set aside for SPEEA engineers. And in their arguments supporting that they stated that they were neither fish nor fowl because the supervisors participated in the incentive plan and they did not, and the supervisors were barred from the suggestion system and so were they. They didn't think they should be barred from both. And after consideration on our part that seemed somewhat reasonable that they shouldn't be barred from both, so we consented to their request, and, as I say, it took a considerable period to work it out and put it into effect.

Q. As a matter of fact, what had they asked to be included in was the incentive plan?

A. They asked for the suggestion system in lieu of the incentive plan when we were unwilling to concede to their demands.

(Testimony of James D. Esary.)

Q. To what demands?

A. Demands for inclusion, for a 20 per cent pool, for a 20 per cent portion of the incentive pool to be set aside for engineers.

Q. You mentioned that you had in mind one individual whose suggestion netted him a total of something like $2500. Can you [250] tell me what the average income to the average employee from the suggestion plan at Boeing is?

A. I do not have those figures in mind. I don't know that I have ever known. We tried at one time at SPEEA's request to come up with an average figure.

Mr. Perkins: There is no question about the fact that it is substantially less than that and we don't intend to convey any other impression.

The Witness: The fact that that was outstanding was the reason that it stays in my mind.

Q. (By Mr. Weil): Can you tell me how many awards are made on an annual basis?

A. How many awards?

Q. Under the suggestion plan.

A. I don't have that information in my mind. But, of course, it would vary from year to year depending upon the suggestions of what comes up.

Q. Can you tell me, do you have any idea what the figures were for 1952? A. No, I do not.

Trial Examiner Miller: Before this goes any further, I think I would like a little explanation to the record as to the significance that each party attaches to this suggestion plan.

(Testimony of James D. Esary.)

Mr. Perkins: My intention in asking Mr. Esary a question along that line, Mr. Examiner, was simply to put in the record [251] for your consideration and the Board's consideration the general picture of the relationships, attitudes, and feelings of the parties one towards the other during the period that we were interested in here down to the present time. It certainly was not introduced with the intention of placing what I would consider undue emphasis on the dollar amount involved in the particular item under discussion here. I thought it was part of background material that would be of interest to you and to the Board. I regarded it in the same category as the questions that I asked and the evidence that was introduced relating to the previous bargaining history.

Trial Examiner Miller: Very well. For that purpose I am satisfied that it is admissible and proper in the hearing but I raise the question for the guidance of counsel as to how thoroughly we can litigate. You can guide yourself accordingly.

Mr. Tillman: I think our concern was whether it was a demand made by SPEEA and granted by the company or whether it was a company originated idea which was put into effect.

Trial Examiner Miller: Very well.

Mr. Perkins: I would be willing to have the witness answer on that one.

Trial Examiner Miller: I don't know but what our record is already sufficient on that point. I merely raised the question for the guidance of coun-

(Testimony of James D. Esary.)

sel. I am not making a ruling nor restricting the examination in the light of the discussion, if the [252] subject has been explored as it might fully be explored, then we can pass on to something else.

Mr. Weil: That is all the cross examination.

Trial Examiner Miller: Mr. Cluck?

Mr. Cluck: I have no questions.

Trial Examiner Miller: Mr. Perkins?

Mr. Perkins: The witness is excused.

Trial Examiner Miller: You may be excused.

(Witness excused.)

Mr. Perkins: Mr. Logan.

A. F. LOGAN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Perkins): Your name is Mr. A. F. Logan? A. That is right.

Q. And you are presently vice president of Boeing Airplane Company, Seattle Division, in charge of industrial relations?

A. That is correct.

Q. And you have been in charge of industrial relations of the Seattle Division of the Boeing Airplane Company since what date?

A. January 1946.

Q. Inquiry has previously been made here as to the significance of the Seattle Division, and I would appreciate your describing the operations of the

(Testimony of A. F. Logan.)

Boeing Airplane Company and the locations [253] of those operations that are considered to be within the purview of that term "Seattle Division".

A. We have in Seattle, first, a corporate headquarters of Boeing Airplane Company. In the Seattle area we have plant one, plant two, and the Renton plant. We have warehouses scattered all over King and Pierce Counties, but the three I have mentioned are the principal manufacturing operations. At plant two, which is located in Seattle and King County, it straddles the city limits, is the headquarters of the corporation, all of the corporate offices and all of the executive offices. That portion of the Boeing Airplane Company is referred to as the Seattle Division.

Q. There are two divisions of the Boeing Airplane Company? A. That is correct.

Q. It is a single corporation?

A. It is a single corporation.

Q. And the other division referred to is what?

A. Wichita Division, located in Wichita, Kansas.

Mr. Perkins: I would invite questions from the Trial Examiner, if the subject, in his opinion, should be covered more completely.

Trial Examiner Miller: No, I think that is adequate.

Q. (By Mr. Perkins): You are familiar with the discharge of Mr. Pearson on January 27, 1953?

A. Yes. [254]

Q. And you were present at the time of such discharge and placed such discharge in effect?

(Testimony of A. F. Logan.)

A. Yes.

Q. As I understand it, the later portion of the conversation that took place on the occasion of Mr. Pearson's discharge was reduced to stenographic notes and that is here in evidence as General Counsel's Exhibit 7. Is that correct?

A. I don't know whether it is 7 or not. I haven't seen it.

Q. I am sorry, Mr. Logan, I should have handed it to you. A. I know it is here.

Q. Will you read it, please?

A. My answer is yes.

Q. And those transcribed notes that appear in General Counsel's Exhibit 7, in your opinion correctly reflect the conversation that took place in the later part of the conference to which I refer?

A. That is correct.

Q. Will you please give your version of what took place at that conference and on that occasion prior to the time that the taking of those stenographic notes began?

A. Mr. Pearson came into my office, at which time there was present Mr. Soderquist, and I asked him to sit down and told him I wanted to talk to him informally, and he sat down, and I told him I wanted to talk to him about this so-called MAC and I asked him if it were a fact that he was a licensed and bonded employment [255] agent. Mr. Pearson probably at that time very early in this conversation asked for representatives of SPEEA to be present. I told him I didn't think that was

(Testimony of A. F. Logan.)

necessary since this was an informal meeting and I simply wanted to get some information from him. So I again asked him if he was a licensed and bonded employment agent. He then started to write in a loose-leaf memorandum book which he had with him, which he had brought in with him and he wrote at some considerable length, and Soderquist sat and watched him, and when he had concluded his writing he read to me what he had written. And as I recall, that statement which he read was to the effect that the Manpower Availability Conference as an activity of SPEEA and his participation in it was as a part of his duties as a SPEEA committeeman, and he didn't consider it was proper for me to question him on that matter, without considering or accepting the fact that it was a SPEEA activity. And he may again at that time have suggested or expressed the desire to have SPEEA members present. I picked up from my desk the letter of invitation which had been sent out to these several employers all over the United States and asked him if the signature on that letter was a facsimile of his, and he again started to write. So we waited and watched him write, maybe five minutes, it may have been ten, but it was a considerable time, and we simply sat and let him finish writing. And he again read his reply to me and again reiterated a portion of what he had written and then he claimed that I was conducting a [256] personal inquisition against him. I told him that it was neither personal or an inquisition,

(Testimony of A. F. Logan.)

that I was merely attempting to obtain some facts from him. At some point about that time, I do not recall whether he wrote two or three fairly lengthy answers, I said to him, "If you want a record of everything you say, which you appear to want, then let's get a record of everything both of us say." So then I called in a secretary and directed her to take notes on the conversation as she heard it from then on in. Mr. Pearson refused to give me any information as to the conference or his status with it——

Q. (Interrupting) You are referring to the Manpower Availability Conference?

A. The Manpower Availability Conference or his relationship to it, or his participation in it, and so I told him then——

Q. (Interrupting) Was the rest of it transcribed or are you still referring to the——

A. (Interrupting) I believe the rest of it is transcribed from then on.

Q. Do you want to inspect the exhibit, Mr. Logan?

A. I would like to inspect it to see whether the statement I am about to make is or is not in that transcript.

Q. I am placing in your hands General Counsel's Exhibit 7.

A. The balance of my statements to him at that time are contained in the transcript.

Q. Will you briefly give your previous company practice with [257] respect to termination of in-

(Testimony of A. F. Logan.)

dividuals in the SPEEA unit, as to whether it was customary for SPEEA officials to be present.

A. It never has been or had been necessary for SPEEA members to be present.

Q. Had SPEEA ever objected to that practice?

A. Not to my knowledge.

Q. Handing you the undated SPEEA letter to you which bears a notation indicating that it was received by the company on 1/23/52, which is General Counsel's Exhibit No. 5, that was the letter in which SPEEA advised you that it "had started and will complete a Manpower Availability Conference". In the fourth paragraph of that letter it is stated, "In offering this service to its members, SPEEA has retained an agency for bringing together those engineers and companies who may care to discuss employment possibilities". At the time when you received the letter, did you have any idea or information as to the identity of the "agency" to which reference is therein made?

A. None whatever.

Q. Did you have any basis for connecting such agency with Mr. Pearson's name?

A. I had never heard of Mr. Pearson at that time.

Q. When did you first see the form letter entitled "Are you in need of additional engineers", that bore the facsimile of Mr. Pearson's signature, which is General Counsel's exhibit No. 4? [258]

A. Oh, it was about the same time. I don't have a clear recollection of whether it was at the same

(Testimony of A. F. Logan.)

time or within the next two or three days thereafter.

Q. At that time were you aware of the fact that Mr. Pearson was a Boeing engineer?

A. No, I didn't know anything about him. I had never heard of him.

Q. After you first saw the form letter entitled, "Are you in need of additional engineers", what did you do with respect to Mr. Pearson?

A. The only thing I did at that time was to ask, "Well, who is Pearson?" That is all. I had never heard of him before.

Q. What transpired in that connection after that?

A. I was told by a member of the engineering staff that Pearson was a Boeing engineer.

Q. What did you do then?

A. I said, 'Bring him in here, I want to talk to him."

Q. What occurred after that?

A. I was told that he was out of the city.

Q. Continue with the events that led up to the conference at which time his discharge was effected?

A. I asked where he was and I was told he was in Los Angeles representing the company in some technical meeting of some type or other that was going on down there. So I said, "Send him a wire and tell him to come back." The wire was sent and he came [259] back. When he came back he was brought to my office and that is when the conver-

(Testimony of A. F. Logan.)

sation took place that I have previously testified about.

Q. You are familiar with the negotiations that occurred between SPEEA and Boeing during the 1952-53 period? A. Yes, I am.

Q. Had you received information prior to your first meeting with Mr. Pearson as to the action that was contemplated by SPEEA in connection with the Manpower Availability Conference?

A. Yes, I had.

Q. Over what period of time had you received such information? A. Several months.

Q. In what form or by what means did you receive such information?

A. I think I received it principally from the various bulletins published by SPEEA committees. I receive a copy of the bulletin published by the so-called action committee which laid out numbers of, let us say, contemplated action against the company, and there were occasionally informal meetings of these various activities that myself and my staff had with SPEEA members and SPEEA officers. These references and this information came in that form over a period of several months.

Q. What was the information that you received during this period as to the proposed Manpower Availability Conference, that is, the nature of it, what it was intended—what its intended [260] objectives were, and so forth?

A. Considering all of the information which I received from any source, I merely considered the

(Testimony of A. F. Logan.)

Manpower Availability Conference as another one of the pressure moves like many others which I was aware of that SPEEA had in contemplation. I never considered it anything else but that.

Q. Aside from how you considered it, Mr. Logan, what did the information indicate as to the objectives of the Manpower Availability Conference?

A. It indicated, I should—it is indicated the objective was to deprive us of the services of a sufficient number of engineers to impair our projects and thereby bring pressure on us to meet SPEEA demands.

Q. Was any similar information received by you during that period that would indicate the nature of the other types of action that you stated to be as, I think you characterized them, as other forms of contemplated actions on the part of SPEEA?

A. Yes, I did. I will not characterize them as, at least in my belief, contemplated coercive or pressure action.

Mr. Perkins: I ask that that be stricken as immaterial. I just want to know how they characterize the information received, what their objectives were and what they were.

The Witness: They were characterized——

Mr. Cluck (interrupting): We object to this question, Mr. Examiner, on the grounds that it is hearsay, and on the further [261] grounds that it relates to acts apart from the Manpower Availability Conference, whereas, in the answer of respondent matters relating to the Manpower Availability Con-

(Testimony of A. F. Logan.)

ference are the only ones that are alleged to involve anything in the nature of unfair action or labor practice on the part of SPEEA.

A broad question like that invites inquiry into one of a number of undisclosed acts not referred to in respondent's answer, and we submit not related to the issue as to whether or not the Manpower Availability Conference is a legally protected, concerted activity.

Trial Examiner Miller: Insofar as the objection relates to the hearsay character of the witness's possible response, I will make this observation, that I can see in the general line of examination, and the form of the question, the possibility that a response may be elicited which has both hearsay aspects and non-hearsay aspects. I propose to receive the evidence only in its non-hearsay aspect with respect to the objection, presented to relevancy and materiality posed in the light of the pleadings. The objection is overruled.

Mr. Perkins: May I be heard on the point as to hearsay, Mr. Examiner, or have you ruled?

Trial Examiner Miller: I have ruled that I would receive it only insofar as it had a non-hearsay character. Specifically I have in mind this, that if the evidence is offered as providing the basis of subsequent action and a motive for subsequent [262] action, irrespective of the accuracy or truth or asserted truth of the matters recited through Mr. Logan, I will receive the testimony as indicating or

(Testimony of A. F. Logan.)

providing some basis for inference as to the motive for future action taken.

Mr. Perkins: I understand.

Q. (By Mr. Perkins): Will you now answer, Mr. Logan, please?

A. I started to say that these various activities were characterized in the bulletins emanating from various SPEEA committees which we read as pressure activities. That was the stated objective set out on their behalf in some of these various bulletins that were read.

Q. What were they?

A. Oh, such things as I have mentioned here before, refusal to punch time clocks, refusal to work overtime, what has been referred to as spot half-day strikes, timed by a group or department, the peculiar coincidence of everyone in the department having a dental appointment at the same hour on the same day, others of that nature.

Q. Do you recall any negotiations with SPEEA on February 6, 1953, where the possibilities of damage to the company as the result of the Manpower Availability Conference was discussed?

A. I recall such a discussion. It was about that time. I don't know whether it was at that precise meeting or not, but I do recall a discussion in negotiations held about that time.

Q. Will you please state your recollection of the remarks on [263] that subject that were made at that time by both parties?

A. Insofar as my remarks were concerned, it

(Testimony of A. F. Logan.)

is my recollection that I stated that these activities, and particularly the so-called Manpower Availability Conference, were merely intended to damage the company to the extent that it would acquiesce in some or all of the maximum demands of SPEEA. I simply elaborated my reasoning on that to some extent and that reasoning simply ran along the lines that we didn't consider it either ethical or proper or legal, or, as I recall, I think I maybe said honest for people to attempt to remain on our payroll while they tried to tear us down.

Q. Do you recall another negotiation meeting on September 5, 1952, at which possible coercive action by SPEEA against the company was discussed?

A. This is an earlier meeting, I think, than the one I have been talking about. Let's see if I am straight on your question.

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Q. (By Mr. Perkins): Do you recall any negotiation meeting in the fall of 1952 where the matter of possible damage to the company as a result of the Manpower Availability Conference was mentioned by SPEEA representatives there? I am not asking you to identify the individual. [264]

A. Yes, there was such a meeting and such comments were made by SPEEA representatives.

Q. Can you give your recollection of the substance of those remarks?

(Testimony of A. F. Logan.)

A. In substance, the remarks were that it was possible that MAC might damage Boeing, but only if and to the extent that Boeing salary scales were not competitive. That if those scales were found to be competitive in the opinion of SPEEA, that no damage would accrue to Boeing. On the contrary, if they were found to be noncompetitive that, yes, material damage could happen to Boeing.

Q. After the conference at which Mr. Pearson was discharged, as I understand it, the executives of SPEEA immediately requested a conference with the company on the matter of Mr. Pearson's discharge. A. That is correct.

Q. What was your response to that request?

A. I told them we would have such a conference at their convenience.

Q. That response was conveyed in writing?

A. That is right.

Trial Examiner Miller: At this time we will recess until 1:15 p.m.

(Whereupon, a recess was taken until 1:15 o'clock p.m.) [265]

After Recess—1:15 p.m.

Trial Examiner Miller: The hearing will be in order.

A. F. LOGAN

resumed the stand and testified as follows:

Direct Examination—(Continued)

Q. (By Mr. Perkins): Inviting your attention

(Testimony of A. F. Logan.)

to Respondent's Exhibit 14, was that the response to that request to SPEEA? A. Yes.

Q. Did meeting between the parties take place as a result? A. Yes.

Q. How many meetings occurred, Mr. Logan?

A. I recall three. There may have been another one.

Q. Were the respective positions of parties discussed at length in these conferences?

A. They were, yes.

Q. Without going into detail can you state the substance of the discussion at these conferences?

A. Both parties stated their positions, namely, the company taking the position that the discharge of Pearson was proper because it felt that his activities of the MAC both improper and illegal, SPEEA taking the contrary view in all cases. That was the substance of the discussions.

Q. This may be slightly repetitive, but I will ask you at the time these first conferences on the subject of Mr. Pearson's discharge took place, the results of the Manpower Availability [266] Conference were not known to you?

A. No, they were not.

Q. Or to the company?

A. No, I don't think we had any information on it at all, any of us.

Q. How and approximately when did these results become known to the company?

A. I was informed that Mr. Gardiner had called

(Testimony of A. F. Logan.)

Mr. Esary and given him those results. He in turn gave them to me.

Q. And some time after that, on or about March 2, 1953, reemployment was offered to Mr. Pearson? A. That is correct.

Q. Will you please state the reasons for such offer?

A. The principal reason for that offer was that we felt because of communications from and statements made by SPEEA representatives, the discharge of Pearson would tend to impair or impede the negotiations with SPEEA over a new contract, and we didn't feel that one individual or his acts should be permitted to jeopardize the contract affecting so many, and for that reason primarily we offered re-employment to Pearson to attempt to remove that one stumbling block from the negotiations and get on with the job.

Q. And the other reasons were those stated in the company's letter to SPEEA on that subject?

A. That is correct. [267]

Q. Mr. Pearson was later re-employed on or about March 17? A. That is right.

Q. After the possible or potential results of a course of action along the lines of the Manpower Availability Conference, I believe Mr. Esary stated that there were and are about 3,500 engineers in the bargaining unit represented by SPEEA.

A. That is right.

Q. Also speaking approximately, that was true

(Testimony of A. F. Logan.)

during the fall of 1952 and during the period of 1953 up to date. A. That is right.

Q. Would you say that it is easy or difficult for Boeing to obtain engineers of the type now employed in the collective bargaining unit represented by SPEEA?

A. It is extremely difficult for us to get as many as we need.

Q. Is it accurate to say that Boeing's situation during the present period and during the period of the 1952 negotiations was especially critical in this respect? A. That is correct.

Q. During this period would you say that the engineering staff at the Seattle Division of Boeing was adequate in number or inadequate?

A. It is inadequate, materially so.

Q. What effort has been made during this period to obtain additional engineers?

A. We have advertised in all effective media, we have circularized [268] schools, colleges, and sent out recruiting teams to the principal technical schools throughout the United States. We have scanned the major military bases in the country where appreciable numbers of technicians are employed in a civilian capacity. We have even gone so far as to obtain permission on occasion from commandants to contact some of those people. And, in fact, we have used every available and legitimate method that we have been able to find, and we still continue to use all of those methods.

Q. Can you describe in a general way the back-

(Testimony of A. F. Logan.)

log of business that existed during this period with respect to this Seattle Division of Boeing?

A. The backlog of committed business for the Seattle Division currently stands at almost an even billion dollars.

Q. What is the nature of that business?

A. It is heavy bombers, guided missles, gas turbines, and research, and experimental projects which are classified.

Q. In the light of that backlog of business can you describe in a general way the extent to which the company must depend upon an adequately staffed engineering department in order to meet the obligations of the company in connection with such backlog of business?

Mr. Tillman: The General Counsel objects. It seems like we are getting into matters probably upon which all the parties might wish to stipulate.

Trial Examiner Miller: Let's have the stipulation. [269]

Mr. Perkins: I think it might be quicker to put it in by question and answer and I would prefer to do it that way.

Trial Examiner Miller: Very well. I will overrule the objection, if it was intended as such.

Mr. Tillman: I will ask that this be a continuing one.

Trial Examiner Miller: Very well, continuing objection is overruled.

Mr. Perkins: What is the nature of the objection?

(Testimony of A. F. Logan.)

Mr. Tillman: I object to this as immaterial.

Mr. Perkins: And the objection is overruled.

Trial Examiner Miller: Yes.

Q. (By Mr. Perkins): In the light of that backlog, can you describe in a general way the extent to which the company must depend upon an adequately staffed engineering department in order to meet the obligations of the company in connection with such backlog of business?

A. All of our projects are technical in nature, and many of them are highly technical in nature. We simply would not be able to execute those projects without an adequate engineering staff.

Q. Is this particularly true of the aircraft industry and, if so, why?

A. It is particularly true of the aircraft industry and certain others, such as the electronics industry, because aircraft development has attained the stage now where it, the aircraft itself, is so full of electronic and related equipment, computing devices, [270] navigational devices, and that sort of thing, that the type of construction that went into a B-17, for instance, is vastly different that what we are faced with today. The engineering hours required on a present day airplane are vastly greater than those required in the beginning of World War II.

Q. At my request have you made any study of the effect upon the ability of the Seattle Division to carry on its operations in the event that the services of a substantial number of the company's en-

(Testimony of A. F. Logan.)

gineers were no longer available to the company?

A. Yes.

Q. You are informed as to the approximate number of letters sent out to other firms over Mr. Pearson's signature soliciting the attendance of representatives of these firms at a Manpower Availability Conference in Seattle? That was for the purpose of offering employment to company engineers? A. I have been so informed.

Q. Assuming that a substantial number of Boeing engineers in the SPEEA unit, say 500 were to leave the employ of Boeing at the same time, or within a short period, have you an opinion as to the effect that such a development would have upon the operations of the company's Seattle Division?

A. I believe I can state that probable effect in two ways. One, in its impact upon the projects themselves, depending on the number of engineers who left and the rate at which they left. We would have to close down one project after another so long as [271] the exodus continued. Such a procedure on our part would be reflected in the losses of millions of dollars worth of business. How many I wouldn't attempt to estimate, because it all depends upon how many engineers left and how long it took us to reorganize and either get those projects which we had closed moving again, or obtain new projects for those which had been abandoned, or cancelled by the Air Force.

Q. Would such a loss of personnel be considered by you to be one of short duration and one easily

(Testimony of A. F. Logan.)

remedied, or would you say that it would be more of an irreparable nature?

A. I would say that it might take us several years to recover from such a blow.

Q. Can you make any estimated approximation in dollars as to the cost to the company of the result of the situation that I have referred to here?

Mr. Cluck: I object to that question as going far afield, estimating problematical damages occurring from the loss of undisclosed number of employees, if they lost them.

Mr. Perkins: I am just questioning him.

Mr. Cluck: It is a speculative thing at the very best.

Mr. Perkins: I am just asking him if he could make an approximation, Mr. Examiner.

Trial Examiner Miller: I will permit the pending question to be asked, and if an approximation——

Mr. Perkins (interrupting): May I suggest that we just [272] deal with this question, please?

Trial Examiner Miller: Very well.

Q. (By Mr. Perkins): Can you make an estimated approximation in dollars as to the cost to the company of such a result?

A. Only what I said before. It would be in the millions and probably would be many rather than a few.

Q. And, therefore, impossible of approximation.

A. I don't think that we could approximate it, based upon the premise of what is going on now.

(Testimony of A. F. Logan.)

Q. You are familiar with the increase that was made in effect as to the employees, the unit represented by SPEEA, on or about March 12, 1953?

A. Yes, I am.

Q. You participated in a company decision that led to making such increase effective?

A. Yes, I did.

Q. Was the increase greater or less than the increase demanded by SPEEA? A. It was less.

Q. There are in evidence the letters that were sent by the company to SPEEA that related to the increase and the discussions that took place with SPEEA representatives on the matter of the increase prior to its being placed in effect. In addition to these letters and these discussions, did you have a discussion with Mr. Gardiner on the matter previous to placing the increase [273] in effect?

A. Yes, I did.

Q. Mr. Gardiner was the SPEEA executive chairman at the time? A. That is right.

Q. To the best of your information that is the top executive office of SPEEA? A. Yes.

Q. When did this conversation take place, approximately?

A. It was on or about the 22nd of January.

Q. It was a telephone conversation?

A. Yes, it was a telephone conversation.

Q. Can you recall the substance of that conversation, and, if so, please state it.

A. I asked Mr. Gardiner after having called him, first I called him up, and asked him if he

(Testimony of A. F. Logan.)

would reconsider the previous refusal to join the company in making an application to the then Wage Stabilization Board, to place this six per cent in effect. We discussed the matter at some length and, at least three times during that conversation I urged Mr. Gardiner to reconsider, but I was not successful in convincing him that he should do so, and so, after a thorough discussion of it, in which I went so far as to even say that we would sit back and sit on our hands while SPEEA took any credit that might accrue as merely a partial payment on their demands, and I again assured him that there was no effort on our part to embarrass SPEEA or impede the negotiations. [274] His answer remained to the negative and so that was the substance and the end of the conversation.

Q. What was the reason for the company making this increase when it did?

A. Our recruiting campaigns, particularly in the technical schools and colleges in the fall of 1951, and in the spring of 1952, and again in the fall of 1953, were showing progressively worse results as far as our ability to obtain any of these new graduates was concerned. When we got up to late '53, the results were so bad that the management of the engineering division repeatedly came to me and wanted relief with respect to our hiring rates because they stated that they had received from the college placement bureaus themselves the offers that were made by other companies and we were not able to meet those offers.

(Testimony of A. F. Logan.)

Q. (By Trial Examiner Miller): You speak of this as having occurred in late '53?

A. Let's just back away one year on all those dates. How would that be?

Q. (By Mr. Perkins): When you referred previously to 1953, did you mean 1952?

A. I was about to say if we back away about one year from all those dates, I will stick to my testimony.

Trial Examiner Miller: Very well.

The Witness: In the fall campaign of '52 then, and as they were getting ready to get into the field, in the spring of this [275] year they had had such bad results in the fall of '52, and such poor prospects of any real results in '53, that they became finally very insistent that my office do something about this, because wages and salary controls were under my jurisdiction within the company, and they were not at liberty to make these changes themselves, and so they presented some pretty blunt studies and recommendations to me which convinced me that if we were to receive any reasonable returns from these recruiting efforts we had to adjust that wage, and that is the reason why we decided to do it. And that is also the reason why we decided to do it at that time, because I had been told by the engineering management that if they didn't get relief they might as well save the money that the recruiting campaign cost and not send people out.

Q. Will you state the occurrences during the

(Testimony of A. F. Logan.)

fall of 1952, and if applicable, the early part of 1953, as to increases placed in effect by other aircraft companies on the Pacific coast?

A. There were some adjustments made by three other companies in the winter of '52-'53 and we felt the effect of the first one of those adjustments almost immediately. The Douglas Aircraft Company——

Mr. Tillman (interrupting): I object again at this point. We are getting into another field. It is quite immaterial as to what other companies did in in the way of increasing wages.

Mr. Holman: I don't think we are at all, Mr. Examiner. It is rather a competitive idea. [276]

Trial Examiner Miller: I confess that while I can see the relevancy of what other companies did as influencing a decision by Boeing, I confess that the degree of relevancy begins to get a little bit remote if the evidence sustains, will warrant a conclusion that Boeing did something because of a certain state of affairs affecting Boeing, the fact that certain other factors may have been in the situation if they involve this question of what other companies did specifically, it seems to me——

Mr. Perkins (interrupting): The intention of the proof here is to show that this is another factor that entered in timing and consideration of the company in placing the increase in effect when it did.

Trial Examiner Miller: I will permit the question.

(Testimony of A. F. Logan.)

Mr. Perkins: It seems to me it bears directly on the motivation of the respondent.

Trial Examiner Miller: Very well. I will permit the examination.

Q. (By Mr. Perkins): Will you state the names of the companies that placed in effect increases in this period? A. Douglas, Lockheed, Convair.

Q. Have you any approximate idea as to when those increases were placed in effect?

A. Approximately, Douglas at about the end of the year, the end of 1952.

Q. Did those increases enter into your determinations and [277] considerations in connection with the company decision to place in effect the increase of March 12, 1953? A. Yes, they did.

Q. Will you tell us, then, the extent to which those increases were taken into consideration and why it was felt by the company that those increases were of importance in connection with the decision to place the March 12 increase in effect?

A. Well, by the end of the fall campaign of '52 the company wasn't merely feeling that this lack of competitive position—we knew then, we had definite conclusive proof in the fall campaign that we weren't going to get recruits from the colleges unless we did something about the hiring in rate, and then later in the year, it was about the end of the year, Douglas made its adjustment, and sometime in February the other two companies made their adjustment of a like amount, and by that time I had to agree with the engineering management that

(Testimony of A. F. Logan.)

if we didn't make an adjustment we might as well not send out recruiting parties.

Q. Those companies are regarded as competitive with respect to the availability of engineers of the types in the unit represented by SPEEA?

A. They are, in that we all hire exactly the same types of engineers, utilize them.

Q. And those considerations influenced and affected your decision with respect to the March 12 increase? A. Yes, materially. [278]

Mr. Perkins: Mr. Examiner, I am about to take up the matter of the so-called gentleman's agreement, and in doing it it is not my intention to waive my position taken previously with respect to this subject.

Trial Examiner Miller: Very well, it is so understood.

Q. (By Mr. Perkins): Submitting for your examination General Counsel's Exhibit 10, which is a letter dated October 13, from the company to SPEEA, bearing your signature, and being addressed to Mr. Gardiner as chairman of the Executive Committee, which letter relates, to the so-called "gentleman's agreement", does that letter correctly reflect your concept of the so-called "gentleman's agreement"? A. Yes, it does.

Q. How long has there been an arrangement of the type that you describe in the letter that we have just mentioned?

A. I think that particular arrangement goes

(Testimony of A. F. Logan.)

back about three years, or about two and a half years, something like that.

Q. Is there any particular reason why, or explanation for, the approximate date when the arrangement came into existence?

A. Yes, there is, let us say, reasoning behind its having come into being at approximately that date.

Q. Will you state that reasoning, please?

A. During World War II we had what was referred to as the Manpower Control. It was very loosely administered but it did prevent people from jumping from job to job. And, of course, at [279] the close of the war, why, that regulation and requirement ceased to exist, and we had no particular difficulty in the period immediately after World War II, for the year or so later when the various companies started to rebuild their forces or build them higher from the level maintained after World War II, we found a lot of companies bidding against a present employer and trying to buy them away. And I say "buy" literally, because some of those offers were pretty fantastic. And we started at about a year and a half after the World War II where we had been dealing with companies, and where we knew each other, to call each other on the telephone or write each other a letter to say that, "Your employee, John Doe, wants to go to work for us. Do you have any objections?" That became a rather prevalent practice, not only among the aircraft companies but other companies, as I say, where we knew people and where we had dealt with

(Testimony of A. F. Logan.)

them. And after, I think it was about three years or a little over three years ago, we finally decided that because there still remained a good many companies that did not adhere to that practice and new companies starting up, which never had been in existence before, and were going out to obtain an engineer force by any means, at any price, that we better have a meeting of minds in some way or other on this question of pirating, as we called it. So there was some meetings held among AIA companies, some of them attended by representatives from companies not a part of AIA, and finally we arrived at a resolution which states the concensus of opinion [280] and belief of those representatives. In fact, when we were working that out we even went so far as to give consideration to a negative resolution condemning the practice of pirating. We never quite finished that. We got the positive one stating the concensus of opinion was equally effective, so a resolution was drafted and it was approved by the companies. That is the only official action that has ever been taken by AIA or any of its affiliated companies. It is a statement of principle or policy and there never has been an agreement, never has been a contract. Nearly all companies administer it differently to some respect, some greater or less respect.

Q. That is getting a little beyond the scope of my question, Mr. Logan. I will bring that out in a minute. To what extent is Boeing Airplane Company a "one customer" operation?

(Testimony of A. F. Logan.)

A. About 99.44.

Q. Who is that customer?

A. The United States Government.

Q. What branch in particular?

A. The United States Air Force. We also do work for the navy.

Q. To what extent and in what manner does the policy of the Air Force relating to salaries, wages and hiring practice affect or bear upon the company's business?

A. It bears very materially and very directly, because if we pursue policies that they do not approve, they simply reimburse us for the monies we may spend in pursuance of such policies. [281]

Q. Has the Air Force ever expressed any policy on the subject of what is referred to as labor pirating? A. Yes, it has.

Q. You are familiar with the term "labor pirating" as used in industrial circles, Mr. Logan?

A. Yes, I am.

Q. For the record will you tell us what is meant generally by the term?

A. It is meant, the practice of any employer making advances to the employees of another, or responding to advances made by employees of another with offers of employment without permitting the employer to know what is going on. Pirating means to us what you do behind the signboard or behind the bar. Don't let the man know. Steal them if you can. Buy them if you can't steal them. That is pirating as we understand it.

(Testimony of A. F. Logan.)

Q. Has the Air Force ever given Boeing a written statement of policy on this subject?

A. Yes, it has.

Mr. Perkins: Will you mark this Respondent's Exhibit No. 23?

(Thereupon the document above referred to was marked Respondent's Exhibit No. 23 for identification.)

Q. (By Mr. Perkins): Presenting to you what has been marked for identification as Respondent's Exhibit No. 23, is that the written expression of policy to which you referred?

Mr. Weil: Mr. Examiner, I would like to object to this line [282] of questioning. I don't see what it has to do with the issues.

Trial Examiner Miller: The objection is overruled.

A. Yes, that it is.

Q. (By Mr. Perkins): This was received by the company through certain channels of the Air Force? A. That is correct.

Q. You have every reason to believe that it is the statement of the Air Force and no reason to believe to the contrary? A. That is correct.

Mr. Perkins: Respondent offers what has been marked for identification as Respondent's Exhibit No. 23.

Trial Examiner Miller: Is there any objection?

Mr. Tillman: General Counsel objects on the ground that the document is wholly immaterial to any issue in the proceeding. I would like to state

(Testimony of A. F. Logan.)

in that regard that the whys and wherefores of the origin of AIA are immaterial. All we are interested in, if at all, is the existence of AIA.

Trial Examiner Miller: May I see the exhibit?

Mr. Perkins: Yes, sir.

Trial Examiner Miller: The objection is overruled.

Respondent's Exhibit 23 will be received.

(The document heretofore marked Respondent's Exhibit No. 23 for identification, was received in evidence.)

[See page 551.]

Q. (By Mr. Perkins): And to your knowledge, the policy expressed in Respondent's Exhibit 23 had never been retracted? [283]

A. It has not been retracted.

Q. And that is true as of the present time?

A. That is correct.

Q. Mr. Logan, again on this matter of the so-called "gentleman's agreement", is Boeing contractually obligated in any way, to your knowledge, to refrain from hiring engineers from other companies, either in the aircraft industries association or out of it? A. No, we are not.

Q. And by contractual obligation I am referring both to anything in writing or anything oral.

A. We are not.

Mr. Perkins: I am not sure that the record discloses what is meant by the aircraft industries association.

Trial Examiner Miller: No, I don't believe it

(Testimony of A. F. Logan.)

does. I have some personal knowledge of it, but if you would like to have it spread on the record very briefly, why, we can.

Mr. Perkins: It seems to me that the discussion of a gentleman's agreement is hardly intelligible unless we do.

Trial Examiner Miller: Very well.

Q. (By Mr. Perkins): For the record, Mr. Logan, will you tell us very briefly what the aircraft industries association is?

A. It is a trade association, the membership of which consists of aircraft manufacturers, aircraft engine manufacturers, and aircraft accessory manufacturers. [284]

Q. Without going into the names of various members, can you give us approximately the number of companies that are included in this association?

A. Approximately eighty at this time.

Q. What is the practice of Boeing with respect to applications that come to Boeing from the employees who are at the time employees of other companies, which applications seek employment with Boeing and which applications are from personnel that would, if hired by Boeing, become members of the SPEEA bargaining unit?

A. We first acknowledge such applications and ask them if they have any objection if we contact their employer with respect to their work record there. That is the first thing we do.

Q. That would be true as to employees of com-

(Testimony of A. F. Logan.)

panies outside of the AIA as well as companies that are members of the AIA.

A. That is correct, because that is our universal practice, you might say.

Q. Assuming that in such a circumstance the employee replies to Boeing and says, in effect, "I have determined that I do not want you to contact my present employer", what is the practice of Boeing with respect to a reply in that circumstance?

A. We then reply to that statement on his part by telling him in effect, that if he doesn't want us to check his work record with his employer we have no interest in discussing possible employment with him.

Q. How long has that been the practice of Boeing? [285]

A. Oh, that has been the practice of Boeing for about 25 years.

Q. And that is prior to the time that the AIA came into existence? A. Yes.

Q. Approximately what time did the AIA come into existence, if you know?

A. I don't believe I can tell you.

Q. But you are quite sure of the accuracy of your previous answer?

A. I am quite sure of that, yes.

Q. Assuming in such circumstance that such applicant replies to Boeing and says, in effect, "I give you my approval to contact my current employer". What is the Boeing practice then?

A. We then call the employer and tell him that

(Testimony of A. F. Logan.)

the subject employee has contacted us and asks permission to negotiate with that employee for a job at Boeing.

Q. If that company at that time states to you that it would prefer that you do not negotiate or deal with that employee, or if that company refuses to permit you to negotiate with the employee, what is the Boeing practice?

A. The Boeing practice is not to conduct any further negotiations with the employee.

Q. And if that other employer replies back and gives its approval to your negotiations with such employee, what is the Boeing practice then? [286]

A. We then obtain from the employer the information that we want with respect to this person's work record, the type of work he has been doing, and the employer's estimate of the quality of that work, and then we make an employment offer to that individual based on the information we obtain about his work records and his experience.

Q. Do you conduct such negotiations as you deem advisable with the individual that is making the application?

A. That is correct. His employer doesn't appear any further in the negotiations.

Q. In the converse of the situation where the employee who is then employed by another company makes application to Boeing for a position identified with the SPEEA bargaining unit, what is the company practice as to the nature of the reply given to an employee?

(Testimony of A. F. Logan.)

A. You lost me along there somewhere. Let's hear that again.

Q. Strike the question and I will attempt to rephrase it. Let's assume that an employee of Boeing makes application to another company for employment, and I am speaking about employees of the type that are in the SPEEA bargaining unit, and such other employer then writes to Boeing or telephones to Boeing, or otherwise corresponds with Boeing and says, "So and so, the applicant, has contacted us for employment". What is the Boeing practice at that point?

A. We do two things. The first thing we do is contact the employee and see if we can find out why he wants to leave our [287] employ. If his response encompasses something that we can change or correct, we do so, and retain him in our employ.

Q. In such circumstance if you are unable to satisfy the individual or otherwise able to work out the situation, what is the Boeing practice then?

A. We then tell the other employer to go ahead and negotiate with him.

Q. How long has that practice been in effect?

A. As far back as our records go, many years.

Q. To your knowledge has there ever been an occasion at any time when Boeing has refused to permit one of its engineers to negotiate secretly with another company after first having contacted the man and having discussed the matter with him?

A. There never has been such an occasion, to my knowledge.

(Testimony of A. F. Logan.)

Q. Is your position such that you would be apt to know if any such refusal on the part of Boeing would occur? A. Yes, that is right.

Q. And this policy is well known to those members of the Boeing staff that handle engineering personnel matters? A. That is right

Q. After an employee of the Seattle Division of Boeing has contacted another employer and you have had an opportunity to contact him, and have not been successful in working out the matter with him, and he continues to desire employment with the other employer, is he then terminated by Boeing? [288] A. No.

Q. Is there any restriction or limitation placed by Boeing on his further negotiations with such other employer? A. None whatever.

Q. And those negotiations may be conducted secretly as far as Boeing is concerned?

A. That is right.

Mr. Perkins: Respondent rests.

Trial Examiner Miller: At this time we will recess for five minutes.

(Short recess.) [289]

Trial Examiner Miller: The hearing will be in order.

Cross Examination

Q. (By Mr. Weil): Mr. Logan, I would like to recall to you the conferences that were held after Mr. Pearson's discharge, that concerned Mr. Pearson's discharge, that would be the meeting of February 9, I believe, on Monday morning, in which

(Testimony of A. F. Logan.)

you and others met with Mr. Gardiner, Mr. Hendricks and Mr. Pearson. Do you recall that meeting?

A. Yes, I do.

Q. Do you recall stating at that meeting that the MAC was embarrassing the company by publicizing the labor dispute? A. I recall——

Mr. Perkins (interrupting): I object to that. I don't see the relevancy of that here. If it is an attempt to bring in the issue of publicizing a labor dispute, I think it is not the proper time, and I think it is beyond the issues in this case.

Mr. Weil: The witness testified on direct examination about the matters that took place at these meetings. I feel that if these other matters took place at these meetings that they are proper cross examination.

Trial Examiner Miller: Would you read the question to me again?

(Question read.)

Trial Examiner Miller: Objection overruled.

A. I recall making the statement in that meeting that the [290] publicity attendant upon making out the many invitations would without question embarrass the company and possibly damage it. I do not remember tying that statement in any way with the publicizing of the existence of a labor dispute.

Q. Do you recall making any statement to the effect that the company has received a large number of letters concerning the MAC and it was feared

(Testimony of A. F. Logan.)

that many engineers would be influenced against employment there as a result of the MAC?

A. I made no such statement at that meeting.

Q. Did you make any similar statement, or statement to a similar effect?

A. Are you asking me for my statement?

Q. Yes, if you made a statement of that type.

A. I made a statement that the company had received several inquiries regarding MAC.

Q. Did you at the time you made that statement show the individuals present, Mr. Gardiner and Mr. Hendricks and Mr. Pearson, a sheaf of letters you indicated were those inquiries that you had received? A. I did not.

Q. Did you show them a sheaf of letters at that time——

Mr. Perkins (interrupting): What is the materiality here?

Mr. Tillman: We can put it in on credibility alone, Mr. Perkins.

Mr. Perkins: Are you attempting to impeach the witness, is [291] that it?

Mr. Tillman: We have some information that Mr. Logan did do that. He is denying it.

Mr. Perkins: It seems to me that there is a rule on impeachment on a collateral matter.

Mr. Weil: I don't feel that that is a collateral matter. And apparently the main objection of the company to the MAC was the possibilities of damage to the company by the working out of MAC as it was planned. The matter about which I am

(Testimony of A. F. Logan.)

asking was a matter concerning that damage to the company, concerning the company's fear of that damage, and the possibility that it exists, and I don't see that it is immaterial.

Trial Examiner Miller: I will overrule the objection.

Q. (By Trial Examiner Miller): The pending question is whether you had or showed to any of these individuals during the course of this conversation a sheaf of letters. A. I did not.

Q. (By Mr. Weil): You stated in your direct testimony, Mr. Logan, that you learned that adjustments were made by other companies, including Douglas, Lockheed and Convair, Douglas late in December or near the end of the year, and the other two companies in February. Can you tell me what was the amount of the adjustments that those companies made?

A. I was told that it was 6 per cent.

Q. On each case? [292]

A. Yes, in all three cases.

Q. Was it your intention to follow those adjustments by a similar adjustment then?

A. No. We had determined on the amount of our adjustment months earlier than that. We weren't following. We apparently were leading, as far as I know, if there was any relationship at all.

Q. On direct examination concerning the gentleman's agreement, Mr. Logan, you stated that the diverse companies met and worked out this reso-

(Testimony of A. F. Logan.)

lution. When was that meeting? When did that meeting take place?

A. I don't know. Three and one half years ago. I could dig it out of the record.

Q. Were you present at the meeting?

A. Yes.

Q. Did you represent the Boeing Airplane Company? A. Yes, I did.

Q. What was the text of that agreement?

A. Well, in the first place, there wasn't any agreement.

Q. That resolution?

A. I don't think I can tell you. I don't remember the precise wording of it after this length of time.

Q. Do you have any records from which you can take that?

A. I might be able to. I wouldn't even be positive in that.

Mr. Perkins: I think I have it right here. [293]

The Witness: That is fine.

Q. (By Mr. Weil): Mr. Logan, I am handing you this letter which your counsel furnished me. The paragraphs numbered one and two are the substance of that resolution?

A. Yes, that is the substance of it.

Q. Would you read that into the record, please?

Trial Examiner Miller: You are asking that be done in lieu of the actual physical submission of the document as an exhibit?

Mr. Weil: Just those two paragraphs.

Trial Examiner Miller: Very well.

(Testimony of A. F. Logan.)

Mr. Perkins: I must object to this again, Mr. Examiner, on the ground of materiality and relevancy, and mindful of your statement that if something particularly came along that it would be appropriate to invite it to your attention, it seems to me that if there is any issue on this point at all which I question, that there is no multiple employer unit involved in this case, and the matters that are important to the Trial Examiner and to the Board are the acts and the practices of the respondent herein involved. And I, therefore, on that ground challenge the materiality of evidence of this type. I think it is highly prejudicial as possibly indicating some other kind of a practice on the part of the respondent than is reflected by the evidence here.

Trial Examiner Miller: Since the immediate problem is [294] whether or not the particular paragraphs should be read into the record, and since I am unable to evaluate the objection without looking at the paragraphs, I will ask to have an opportunity in that respect.

Mr. Cluck: On direct examination this specific meeting on this specific resolution was referred to, so that counsel has already made his choice as to the prejudicial or non-prejudicial nature of the reference.

On cross the question is simply as to the time and place where the resolution was adopted, and then what the results of it were. The witness already has indicated that this letter embodies the

(Testimony of A. F. Logan.)

terms of the resolution, so, in effect, it simply makes explicit the general reference to the resolution already referred to on direct examination.

Trial Examiner Miller: I did indicate at an earlier point in the proceeding that what then appeared to me to be relevant was the interpretation based upon the so-called "gentleman's agreement" by the Boeing Aircraft Company as bearing upon its motivation for taking certain action with respect to Mr. Pearson and the MAC. And I believe the record will show that I made some remarks at the time to the effect that precise proof as to what the agreement, if there was any, consisted of, would not necessarily be material since the evidentiary factor would be what Boeing believed to be involved as bearing upon its motivation. [295]

Mr. Cluck: May I add two related points directly to what the Examiner has said?

First, the prior ruling was made upon the objection made by respondent to General Counsel's efforts to get the contents of the agreement, or at least the manner in which Boeing reacted to the subject-matter, into evidence.

Now, however, the issue is presented differently, because respondent himself has opened this subject up on direct examination of his own witness, and, therefore, we are confronted with the different question as to whether it isn't proper cross examination for us to have the contents of the resolution referred to on direct examination.

(Testimony of A. F. Logan.)

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Let the record show that during the period of the off-the-record discussion there was extensive discussion of the Trial Examiner's previous remarks and ruling on the General Counsel's line of examination dealing with the so-called "gentleman's agreement", and the position of each of the parties involved with respect to examination along that line. The Trial Examiner has taken cognizance of the arguments presented by counsel before we went off-the-record, and during the period of discussion off the record, with respect to their respective positions on the matter now in issue, namely, the specific quotation from the [296] letter identified by the witness. I am satisfied on the basis of the matter appearing in the record, and the entire state of the record up to this point, that the objection should be overruled.

The Witness: Paragraph one: "Advertising for employees in cities where member companies are located elsewhere unless the member company or companies located in the particular city so agree."

Paragraph two: "Offering employment to employees working for other member companies unless member company where applicant is currently employed so agrees. This applies to offers made either directly or through sub-contracting companies or employment agencies."

Q. (By Mr. Weil): Would you read the intro-

(Testimony of A. F. Logan.)

ductory two lines that preceded those two paragraphs?

A. "There is no middle ground that will cure this problem. Pirating must be discouraged and to that end the following practices are condemned".

Q. Mr. Logan, has it been the practice of the Boeing Airplane Company to conform its policy to that policy as set out in that resolution?

A. Having had my most recent look at that resolution, I will frankly tell you I don't know what paragraph one means, so I can't answer your question.

Trial Examiner Miller: Off the record. [297]

(Discussion off the record.)

Trial Examiner Miller: On the record.

Q. (By Mr. Weil): Let me rephrase that question. Has it been the policy of the Boeing Airplane Company to conform its practice to that policy as set forth in paragraph two of the resolution?

Mr. Perkins: I believe the witness has already testified as to the practice of the company.

Trial Examiner Miller: I will permit the question to stand.

A. Yes, that is our policy.

Q. (By Mr. Weil): Mr. Logan, I am handing you Respondent's Exhibit No. 23, which is the Air Force letter to which you referred earlier. Is it the practice of the Boeing Airplane Company to conform its policy to all five of the recommendations set forth therein?

(Testimony of A. F. Logan.)

A. Yes, it is our policy to subscribe to all of those items.

Q. I don't seem to have asked you what the place was at which that AIA meeting took place. Where was that meeting held?

A. In Los Angeles, California.

Mr. Weil: That is all.

Trial Examiner Miller: Mr. Cluck?

Mr. Cluck: No questions.

Mr. Perkins: No questions.

Trial Examiner Miller: You may be excused.

(Witness excused.)

Trial Examiner Miller: Does the respondent have any further witnesses?

Mr. Perkins: No.

Trial Examiner Miller: Is there any rebuttal on behalf of the General Counsel?

Mr. Weil: May we have a 5-minute recess?

Trial Examiner Miller: We will have a short recess.

(Short recess.)

Trial Examiner Miller: On the record.

Mr. Perkins: I should like to ask the witness one question, if I may, that was on the stand before we rested.

Trial Examiner Miller: Very well. Would you resume the stand, Mr. Logan?

A. F. LOGAN

resumed the stand, having been previously sworn, and testified further as follows:

Redirect Examination

Q. (By Mr. Perkins): Mr. Logan, is there any question that was propounded to you on cross examination, or any answer given by you on cross examination, or anything in the resolution that was referred to that would indicate to you any reason for qualifying or changing any of your answers to the questions propounded to you on direct examination by counsel for respondent?

A. Nothing whatsoever. [299]

Mr. Perkins: That is all.

Trial Examiner Miller: Is there anything further?

Mr. Weil: Nothing further from General Counsel.

Trial Examiner Miller: You may be excused.

(Witness excused.)

Trial Examiner Miller: During our recess, Mr. Perkins, you indicated that you might want to reconsider your decision to rest on behalf of the respondent.

With the further appearance of Mr. Logan on the stand, what is your present disposition on that matter?

Mr. Perkins: Respondent rests.

Mr. Weil: No rebuttal.

Trial Examiner Miller: Are the parties prepared at this time to argue orally or do you wish a further recess?

Mr. Weil: I am prepared to argue to a limited extent, the only extent to which I was prepared today.

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

At this time, before proceeding to the oral argument, the course of which was discussed during our period of discussion off the record, I should like to recapitulate for the the record my understanding with respect to the situation in regard to the exhibits.

My notes show that General Counsel offered in evidence 19 [300] exhibits. All of those exhibits have been offered in duplicate and my notes show that all of the exhibits were received in evidence.

Does that statement correctly reflect the understanding of the parties?

Mr. Tillman: That is right.

Mr. Weil: That is correct.

Trial Examiner Miller: Should our mutual recollection and my notes be in any respect in error, I will at this time state for the record that General Counsel's 1-A through 1-I, inclusive, and General Counsel's 2 through 19, inclusive, are hereby received in evidence.

My notes show that the respondent company offered 23 exhibits in evidence, and that all of them were offered in duplicate. My notes also show that all of the 23 exhibits were received in evidence.

Does that gibe with the recollection of the parties?

Mr. Tillman: Yes.

Mr. Perkins: Yes, I believe that is correct.

Trial Examiner Miller: Should our mutual recollection and my notes be in any respect in error, I will at this time state for the record that Respondent's 1 through 23, inclusive, are hereby received in evidence.

I am prepared at this time to hear oral argument. I had some indication during one of our recess periods that the General [301] Counsel would require no more than a half an hour for the purpose of presenting such oral argument as he is prepared to give at this time.

In order to provide a working guide, we will set one half hour at the top limit tentative to see how we can work it out.

Go ahead, Mr. Weil.

Mr. Weil: I should like first to point out that the evidence not in dispute supports the allegations of the complaint.

Let us examine the pertinent, relevant facts which constitute the violations.

First, there has been a long period of fruitless bargaining ending in an impasse. During the course of bargaining the members of AIA became disturbed and upset and caused their bargaining team to take up with the employer the problem of the gentleman's agreement of the AIA, because they felt that that gentleman's agreement was an infringement upon their right of freedom of movement within the framework of their profession, and

that it was an undue restriction upon that freedom to sell their services to the highest bidder.

The members of SPEEA through their Action Committee, through their Executive Committee and through meetings, as a body evolved what was to become known as the MAC, which was evolved for three separate and distinct purposes.

The three-fold purpose of MAC has been completely covered in testimony which was uncontroverted. The MAC was designed to [302] restore the freedom of movement, and the freedom of the membership to sell their services to the highest bidder. In other words, to restore an element of competition to the engineering labor field which the members felt had been restricted by the gentleman's agreement.

Second, the MAC was designed as a pressure tactic to break the impasse that existed, and to force the company to give further consideration to the arguments of the SPEEA negotiators.

And, third, and finally, I would hesitate to say less important, the MAC was designed to supply data which the members of the SPEEA felt would help both the company and SPEEA in evolving the extent to which raises and improvement of working conditions should be granted by the company.

Therefore, it seems quite plain that the MAC was an activity undertaken by the members of SPEEA in support of their bargaining position. It was also an activity undertaken by the members of SPEEA as a concerted activity to aid and assist each other

in many respects, each of those respects which I set forth.

The discharge of Mr. Pearson brought the question of the MAC to a head. The discharge of Mr. Pearson by the facts adduced in this hearing, by the pleadings in this hearing, is shown to have been a result of his acting on behalf of SPEEA in running this conference, and the result of nothing else. The factual reason given by the company as to his discharge shows that his [303] discharge resulted only from the fact that they considered this as a SPEEA activity. This discharge must necessarily be an unfair labor practice if the MAC was a protected, concerted activity. I believe there could be no doubt that it was a concerted activity.

The question and the major issue in this case remains was it a protected, concerted activity?

Now, protected, concerted activities are spelled out in the Act, Section 7, which states employees shall have the right to self-organization, to form, join or assist labor organizations—note that word to "assist"—to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The activity of the MAC certainly was the activity of a labor organization, and Mr. Pearson's participation in that was within the meaning of Section 7, assisting his labor organization to which he belonged. That is to say the MAC was a form of concerted activity engaged in which SPEEA, for the purpose of collective bargaining first, that

is, in the respect in which it was expected to supply data and to put pressure upon the company, and for mutual aid and protection for the members of SPEEA, and in that respect the function or purpose of MAC was to restore the freedom of movement, freedom to bargain for their services which the employees had been infringed by the [304] AIA.

There has been considerable litigation concerning protected, concerted activities, naturally, which activities have and have not been protected. Perhaps the leading case in the field is the case of National Labor Relations Board vs. Peter Kohler, Swiss Chocolate Company, Inc., 33 N.L.R.B. 1170. This was reviewed by the Second Circuit with a decision to be found in Volume 130, Federal (2nd) 503.

In this case the union member published a union resolution condemning actions of the employer. In fact, he brought this resolution about and caused it to be published and was discharged. The second Circuit said, and I quote, "So long as the activity is not unlawful, we can see no justification in making it the occasion for a discharge. A union may subsidize propaganda, distribute broadsides, support political movements, and in any other way further its cause or that of others to whom it may wish to win to its side. Such activities may be highly prejudicial to its employer. His customers may refuse to deal with him. He may incur the enmity of many in the community whose disfavor will be hard on him. But the statute forbids him

by discharge to rid himself of those who lay such burdens upon him."

The test there taken by the Second Circuit was the test of the illegality or unlawfulness. That test has been followed by the Board and by the courts ever since. Sometimes it is [305] claimed to the point of absurdity, but nevertheless it has been followed.

The question arises, then, was anything in the MAC unlawful? And I submit that there is nothing about the MAC which is unlawful under any law of this United States. It is possible that in some jurisdictions there may be state laws that would forbid or possibly local laws that would forbid this, but the fact that an action is unlawful under state or local ordinances, as the Board said in the American News Company case, 55 N.L.R.B. 1302, and I will quote directly, "We think it most unlikely that Congress intended to exclude from the concerted activities protected by Section 7 all conduct deemed tortious under state rules of decision or statutes or city ordinances merely because of the objective sought to be accomplished."

Now, in many cases the course and boards have found that the activities indulged in by the unions have been unprotected, concerted activity.

If we take a look at these cases we can easily see why the courts and the boards have so found. The leading case there is the Fan Steel case, which is to be found at 306 U.S. 40, in which the Supreme Court found an activity unprotected. This activity was the illegal seizure of the Fan Steel plant by

a sit-down strike. The Fourth Circuit in the Clinchfield Coal case, which is found at 145 F. 266, followed the ruling in a similar illegal seizure case.

Also, the Fourth Circuit in the case involving the Draper Corporation, 145 Federal (2nd) 199, found that a wildcat strike was unprotected. This strike was in direct contravention of a union's agreement not to strike.

However, the Sixth Circuit said that even that was going too far in the Kalamazoo Stationery Case, found at 160 Federal (2d) page 465, where they held a wildcat strike to be a protected concerted activity. This was in 1947. The prior case in 1944.

In the Sands Manufacturing Company case, the Supreme Court, citation 306 U.S. 332, extended this doctrine slightly, if it can be called an extension, by finding that action which resulted in a breach of collective bargaining contract was unprotected.

But there, you see, the breach was a breach of the law of the land, the law of contract.

Similarly in other cases it has been found a mass picketing is not protected, concerted activity, coercive picketing, strike to violate a Board's certification or to cause an employer to violate a Board's certification, and similar activity of a vicious or violent or unlawful nature.

More recently the Board has held to this same theory and the courts similarly, that in order to fall in to the ranks of unprotected activity, the concerted actions taken must be illegal, unlawful, or

of so serious and flagrant a nature as to render the employees participating unfit for service to their employers. [307]

I don't believe that respondent claims that Mr. Pearson was engaged in activity of so serious a nature that it rendered him thereafter unfit for employment, otherwise I think they would not have re-employed him.

I think after a view of the record and of the authorities that there can be little doubt that the activities engaged in in this case were protected. That being the case, the discharge of Mr. Pearson would have been a violation of Section 8 (a) (3) of the Act.

It is the General Counsel's contention that by this violation of the Act, the further—or the impasse then in existence became tainted with a taint of bad faith. The General Counsel has carefully taken no position as to whether the bargaining prior to this time has been so tainted, was so tainted, by the activities engaged in by the course which bargaining took. It may well be that the bargaining, the impasse reached from the time it was reached was tainted with bad faith, but the General Counsel does not rely on that, but merely asserts that from the time of the discharge of Mr. Pearson, which was taken and had the effect of supporting the company's desire to have no more of such activities as the MAC, from that time on the impasse was definitely tainted. And in the face of that tainted impasse, respondent went ahead and instituted a unilateral increase in wages which

respondent explains was necessary in order to insure their obtaining their full share of the supply of new [308] engineers coming out of school.

Then the quite recent case of the City Packing Company, found at 98 N.L.R.B., No. 203, the Board said, in essence—I am not quoting directly—that an impasse does not justify unilateral changes and conditions of employment when good faith is lacking, since the impasse might otherwise not have occurred.

It would be pure speculation to say that the impasse would have been broken or would not have been broken, but I don't feel that by the company's refraining from taking the action which they did in response to the MAC, I don't feel that that inquiry is necessary. The company did take that action. And in the face of an impasse which I contend at that time was bad faith, instituted this unilateral wage increase for the purpose I mentioned, which is all covered by the company's witnesses' testimony.

Trial Examiner Miller: Is this the theory on which you seek to avoid the Justice Burton's dictum in the Crompton Highlands Case?

Mr. Weil: Yes.

Trial Examiner Miller: Go ahead.

Mr. Weil: The respondent's witnesses did not state in what respect they expected that the granting of the 6 per cent increase of a retroactive pay increase for overtime would help in hiring new employees. I believe that that shows possibly that there may have been other reasons than the com-

pany gave for [309] instituting this wage increase, and these other reasons may have very well have been, and I believe that they were, to undercut the union's negotiating and to make it impossible for unions to continue to negotiating effectively at that time.

Mr. Perkins: If there is any question about there being evidence on that point, I ask leave to reopen the case and present evidence on it. I don't think there is an absence of evidence on that point, however. It certainly was my intention to adduce evidence on the point.

Trial Examiner Miller: Of course, in effect I may be put in a position where expressing an opinion on the subject—I am expressing a factual finding right here and now.

Would you read Mr. Weil's last statement to me again?

(Statement read.)

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Go ahead, Mr. Weil.

Mr. Weil: Finally, and briefly——

Mr. Perkins (interrupting): Excuse me for the interruption, Mr. Weil.

Mr. Weil: That is quite all right.

I want to draw attention to the factor of Mr. Logan's refusal to permit the appropriate members of SPEEA to be present at the interview in which Mr. Pearson was discharged. I think [310] there could be not a better example of the manner in

which the company went behind the union than this.

Mr. Pearson made it plain that he considered his activities to be union activities, and in view of the fact that the company had been given all the facts concerning the MAC right in the inception, I don't see how Mr. Logan could have had any doubt in his mind that this was a union activity. Nevertheless, Mr. Logan refused to allow Mr. Pearson to have these individuals present and discharged him on that occasion. This undermined the union's authority and certainly had the probable effect of so doing, and showed an additional indication of the company's refusal to bargain.

That is all I have to say at this time.

Trial Examiner Miller: In considering the question as to whether or not the MAC involved a protected, concerted activity, has the General Counsel had occasion to consider the significance, if any, of the case involving Metal Moldings Corporation, 397 N.L.R.B. 107, and the action with respect to that case in the Court of Appeals for the Sixth Circuit?

Mr. Weil: Offhand, I don't recall that case.

Trial Examiner Miller: The case was a situation in which in the midst of an active union campaign one of the employees, who was an active union supporter, was discovered to have engaged in activities which may be summarized roughly as follows: As one of the employees engaged in metal polishing, this [311] particular individual advised a number of his fellow metal polishers that his father was a foreman of the polisher's department at a com-

peting firm, and that they would be well advised, if dissatisfied at Metal Molding, to seek employment with his father. The Board upon accessing all of the relevant evidence found that such remarks had been made by the employee, but apparently came to the conclusion on balancing all of the evidence that his activities in that regard, although known to the company, were not the determining factor in connection with his discharge, but that he was in fact discharged for his activities on behalf of the union organization which he supported, over and above whatever he may have done by way of remarks of this type to fellow employees. The Board's order for reinstatement and back pay was reversed by the Sixth Circuit in a decision which is not reported in the Federal Reporters Service so far as I know, but which is reported at 12 Labor Relations Manual 723. And as I understand it, the Sixth Circuit took the position that an individual who was engaged in "recruiting" employees for a competitor, and who was discharged for that reason, had been properly discharged. The precise way they put it leaves some doubt as to whether they were holding that that type of activity warranted discharge under any circumstances, or whether they were holding that in the face of such proof, substantial evidence of anti-union motivation was lacking. I call the case to the attention of the parties.

I am wondering if the General Counsel has considered it and has any comment.

Mr. Weil: Yes. I didn't recognize the name of the case when you mentioned it. I have considered

that case. That case, incidentally, I should have brought it out because it brings to light a fundamental disagreement on facts that seem to exist in this case, in our present case. That is to say, that case concerned an individual who made it his business, or attempted to make it his business, to take employees away from his company, and to send them to another company. This case is not only comparable to that case, it is distinguishable on this basis, the MAC is not the action of an individual coming in here and asking 500 engineers to go to work for somebody else. The MAC is 500 engineers getting together and saying, "We would like to go to work for somebody else. Let's look for somebody else who will hire us." It is a concerted activity.

Mr. Examiner, in the case, Metal Moldings case, that was not concerted activity. Whether it was protected or not, it wasn't concerted, because this individual did this on his own hook. It wasn't the employees, it was not a movement from within as I think we have shown the MAC to have been. Nobody asked these people to leave Boeing's employ. And the statements made in the letters which are in evidence indicate that the SPEEA at least had the concept that under the circumstances of such a conference, probably Boeing would find it necessary to [313] become competitive. If it was not competitive, nobody would leave Boeing. They have asked—come to SPEEA and asked SPEEA to have a conference by which they can leave Boeing's employ. It is a fundamental difference, as I

see it, and it is the basis on which the concerted activity should be protected. Surely it is no different than the union setting up its hiring hall or setting up some form of an employment office, which is not unusual.

Trial Examiner Miller: Very well.

At this time we will recess for five minutes.

(Short recess.)

Trial Examiner Miller: On the record.

The hearing will be in order.

Mr. Cluck.

Mr. Cluck: In the interest of brevity, Mr. Examiner, unless this hearing goes over a half hour or some period of that sort, where there is a decision to submit or rebuttal, if it does, we will submit it by written brief.

Trial Examiner Miller: Very well.

Mr. Perkins.

Mr. Perkins: Mr. Examiner, the complaint alleges negotiations between the employer and the union here involved that extended through the better part of 1952 into the spring of 1953. It alleges that the parties were unable to reach a mutual agreement as a result of those negotiations. It then alleges the [314] discharge of one of respondent's employees.

Simply stated, the essence of the complaint is that the nature of that discharge was such that the discharge of one individual impinged upon the collective bargaining negotiations between the parties, and that from and after the discharge of this single

individual that the bargaining thereafter became bargaining in bad faith.

Primarily, as I understand it, because the discharge of the individual was contended to be wrongful, and because there was no bargaining in turn with respect to the discharge of the individual, and that thereafter, despite the fact that the individual involved was re-employed, the entire course of negotiations on the basic contractual issues between the parties became irreparably tainted and irreversibly tainted to the point that the unilateral increase that was placed in effect by the employer is, it is contended, automatically an evidence of bad faith on the part of the employer.

The answer admits the negotiations and the discharge of the individual, and the unilateral increase, but takes the position on the part of the respondent that the discharge was proper and for cause, that, therefore, there is no effect of the discharge upon the collective bargaining negotiations; that in any event, the incident of the discharge did not impinge upon the contractual negotiations between the parties; that the course of procedure followed by the employer throughout the negotiations was [315] proper; and that the action taken by the respondent in connection with the unilateral increase was not motivated by any clandestine and unspoken feelings of animosity toward the union, that the unilateral increase was not placed in effect with any intention of affecting or disparaging the prestige of the collective bargaining agent here involved, but rather that the unilateral increase was

placed in effect by reason of a business situation which rendered it a compulsory matter in the eyes of the company on the basis of the company's business situation at and prior to the unilateral increase taking place.

Now, with the parties in those respective positions, the General Counsel contends that the discharge of Mr. Pearson is improper. The respondent, of course, contends that it was proper. And it seems to me very clear that if we were dealing with an individual situation here, and it were found that an employee identified himself positively with a movement intended to bring pressure and to present potential damage to the company, and permitted his name and his signature to be used in that connection, and was, in effect, in charge of the movement, and had taken overt steps in connection with the movement, and the movement was under way, that an employer unquestionably would have the right to discharge the employee for cause. But it is said that the employer does not have that right in this circumstance because Mr. Pearson's activities, the individual here involved, were concerted, and that for that reason those activities fall [316] within the scope of Section 7 of the Act and, therefore, a violation of Section 8 (a) (1) necessarily results.

Before taking up the matter of alleged violation of 8 (a) (1), I would like to address myself briefly to the contended violation of Section 8 (a) (5) momentarily.

It is contended here that the employer refused

to bargain on the matter of Mr. Pearson's discharge. If that discharge was discriminatory, and I say that then I think that there may be some serious question as to any duty to bargain under the circumstances. If the discharge was not discriminatory, then respondent's position with respect to that discharge is that respondent discharged its duty to bargain in connection with the discharge, and the point there is that the subject-matter, and the scope of the possible bargaining is so limited as to preclude anything but a statement of the respective positions of the parties.

There were lengthy discussions in which the respective positions were stated, and there is no question but that there was an adequate opportunity for both parties to state their respective positions in detail, and having stated those positions there was no change in the attitude of either, and for that reason it seems obvious that the duty to discharge Mr. Pearson, the duty to bargain with respect to Mr. Pearson's discharge, was met and exhausted by the parties.

Now, if the duty to bargain was completely met, let us say, [317] by both parties here with respect to the discharge of Mr. Pearson, I think that there is a very serious question as to whether you have any possibility of an 8 (a) (1) violation in the case as a matter of law, not as a matter of fact, because if it is a bargainable issue, it would seem to follow logically that bargaining or exhausting the bargaining process would be futile if it can then be claimed after the discharge of the bargaining duty on both

sides that the discharge is nevertheless discriminatory.

Now, passing that argument on the point of law, it is contended that the company's discharge of Mr. Pearson, which after all is the crux of this case, every contention stems back into that discharge, passing that argument and going to the matter of whether the Manpower Availability Conference was a protected, concerted activity, I am simply going to summarize our position very briefly because time will not permit too great an elaboration on the point. I am not going to discuss the facts of record with the Trial Examiner because he has been here with us and has paid close attention, as we all have, to the evidence as it was adduced here.

I will simply summarize respondent's view of the evidence with respect to the Manpower Availability Conference by saying that it unquestionably was a device conceived in lieu of a strike, that the very essence and objective of a strike is to inflict as much damage upon an employer as possible. A strike [318] is referred to as economic warfare. It is that. And the right to strike is recognized and preserved expressly in the Act. But, nevertheless, taking the evidence by its four corners in this case, it was quite apparent that the members of SPEEA were disinclined to strike. They were seeking a method whereby they could keep their positions, continue their income, jeopardize their salaries in no way, and yet by threatened damage to the company force the company to a position where the company would accede to the contractual demands of SPEEA.

I think to characterize the Manpower Availability Conference as more or less of an information center, as some kind of a hiring hall, device to make engineers available and adjust the marketing, the market position of engineers throughout the industry, is not too realistic in this case, when the record is reviewed as to the manner in which the MAC was developed, the reasons why it was developed, and the stated objectives in connection with its development.

As to whether it was simply a planned meeting where information would be collected, I could refer the Trial Examiner to many places in the record, but I invite attention particularly to the language of the letter that was entitled "Are you in need of additional engineers", and went out over Mr. Pearson's signature, as follows:

"The purpose of the conference was to put employers of engineers in contact with those of our members"—I emphasize [319] this—"who are available for new positions."

"A distinction between men"—and I emphasize this following—"who are actively seeking new connections and those whose interest is more intent upon the advantages of other situations will be noted in the makeup of the graphs."

And then, "Over 500 engineers, scientists and industrial mathematicians are pledged to attend the conference"—I am skipping. "These representatives of the employers solicited should come"—and I emphasize the following—"prepared to make firm offers when they interview engineers meeting their

requirements. It is planned next that the conference will be self-liquidating for this reason, each company will be asked to pay a registration fee of $25 and an additional fee of $10 for each engineer hired as a direct result of the conference."

On the graph attached to the letter the black columns are stated to represent, and I quote, "Engineers planning to leave present employment", and the white columns are said to represent engineers who seek a more attractive situation.

Our contention with respect to the position of General Counsel that the MAC was a protected and concerted activity is something like this: To the extent that it was not brought in the nature of pressure against the company in lieu of strike, and to the extent as it has been contended that it was a means of bringing people together, a means of distributing information, I think that there is a serious question as to whether it is [320] concerted activity. I can spend quite a bit of time on the matter of what is concerted activity. Does it mean concerted activity to a given employer? Is there anything illegal about an employer, for example, discharging one of his employees who at the same time is working as, let's say, the manager of an office for another union, which latter union has no possible connection with the employer?

Supposing that a group of employees decide collectively and concerted that they wish to work for some company that is entirely unrelated to the employer, and the employer determines that he doesn't desire that they handle those jobs at the

same time for reasons of his own. I question seriously whether that can be concerted activity within the meaning of Section 7.

But getting to the matter of whether it is protected, and assuming for argument that it is concerted to the extent that it is in lieu of a strike, respondent's position is threefold.

First, it is illegal. It represents a rejection of the bargaining principle in that it was identified with a movement of employees away from the employer.

Secondly, it was indefensible within the meaning of the various cases that are on that point.

And, thirdly, that it was not protected because it was identified with a rejection of employment. It was in that direction. It might be not in that direction up to the time, or during the period it was simply a threat, but once it was put [321] in motion, once the letter went out, we consider it to be identified more closely with an abandonment of employment than simply a threat to quit. It was an active movement going out, seeking on the basis of the language that I have mentioned here from that letter, to other employment.

The individual here involved who centers in the single incident is the crux of this case, was the individual who was in charge, and was the individual who permitted his name to be put on the instrument which was the most important instrument in connection with the activities of the Manpower Availability Conference.

I will conclude by saying that I don't think that

the law, that the intention of the law is, and I hope it is not, that an employer must be compelled to finance an action which is in lieu of a strike, and if such action were carried to its intended objective could be possibly many times more damaging than a strike.

If the Trial Examiner has any questions on any specific point that has come to his mind, I would be happy to try to answer.

Trial Examiner Miller: I think you have adequately covered the subject from the point of view of the questions that I might have had in mind.

Mr. Cluck.

Mr. Cluck: I will submit argument on brief.

Trial Examiner Miller: In due course the Trial Examiner will prepare and file with the Board his Intermediate Report and recommended order in this proceeding, and will cause a copy to be served on each of the parties. Upon the filing of the report and recommended order, the Board will enter an order transferring this case to itself, and will serve a copy of the order, setting forth the date of the transfer, upon all the parties. Service of the intermediate report and the order will be complete upon mailing. At that point, the Trial Examiner's official connection with this case will cease.

The procedure to be followed before the Board thereafter, with respect to the filing of exceptions to the intermediate report and recommended order, the submission of supporting briefs, requests for oral argument before the Board, motions addressed to the Board and related matters, is set forth in the

rules and regulations of the Board. Relevant excerpts from the rules and regulations in that connection will be supplied when the Board's order transferring the case to itself is served upon the parties involved in the case.

Is there anything further to come before the Examiner? Since there are no further matters to be heard at this time——

Mr. Perkins (interrupting): Is it appropriate to talk about briefs? I believe the rules say that that matter should be discussed before the conclusion of the hearing. I have informally expressed myself to the Trial Examiner in the presence [323] of the General Counsel along the line that the respondent would hope for more time than I believe you can allow us, Mr. Examiner, under the rules.

My reasons for that are that we are not going to be able to get a record here for five days. The briefs have to be in San Francisco three days before the expiration of the twenty days, so that when you get through we have got about a net of twelve days, ten or twelve days.

Trial Examiner Miller: It is true, I had neglected to spread our discussion about briefs on the record. We did have discussion about briefs. At this time all counsel are aware all I can do under the rules and regulations is to allow the 20-day period allowed by the rules. However, I did indicate off the record that my own situation insofar as my assignments are concerned, is such that I had no doubt but that the Associate Chief Trial Examiner, if advised of the need for an extension of time would sympatheti-

cally consider any such request. I indicated off the record that I could not at this time give any guess as to how much of an extension would seem to be appropriate, but, of course, you are at liberty to request that extension for whatever period of time seems to you to be appropriate, and I can assure you that any requests for an extension will be sympathetically considered. That is about all I can say.

Mr. Perkins: Thank you. And the 20 days is now granted?

Trial Examiner Miller: Yes. [324]

Since there is nothing further to come before the Examiner in this hearing, the hearing is now closed.

(Whereupon, at 4:35 o'clock p.m., Thursday, June 25, 1953, the hearing was closed.) [325]

GENERAL COUNSEL'S EXHIBIT No. 2

The following is submitted to SPEEA members to determine whether or not such punitive action by SPEEA is desired at this time. Study This, then turn in your ballot to your Area Representative.

Our Pro & Con Committee had no comments.

Introduction

The Manpower Availability Conference is conceived as a "market place" where Engineers who seek more desirable employment can meet with Companies which seek to hire more Engineers. There are three major reasons for sponsoring such a conference; namely, to help those Engineers de-

siring to move to obtain the best competitive offer, ot help to discover the true market price for Engineers, and as a punitive action to reduce the Engineering services available to Boeing.

General Plan

First, signatures of Engineers who pledge themselves to attend such a conference will be obtained through the Area Representatives. A few items of personal data, such as years of experience, will also be obtained for submission to the invited Companies to serve as an inducement. Area Representatives will keep this information confidential. If membership response is favorable, a letter will be written and mailed to every Company we know of in the country which employs Engineers. Perhaps ads could be inserted in the "Positions Available" columns of newspapers in a number of leading cities, inviting inquiries of SPEEA. Next, a date would be set for the conference and arrangements made for the interviews with those Companies who accept our invitation. After the conference, each Engineer who was interviewed would be asked to drop a card bearing his present salary and the increase offered into a box. This information would then be summarized and circulated to all Boeing Engineers. A summary of the experience of persons hired by the participating Companies could be made and circulated to all of the other Companies on our mailing list. It is expected that this information would excite the interest of both groups. Another conference could then be called and the procedure

repeated. This conference should be sufficiently unusual to be newsworthy and could thus aspire to considerable free publicity. This publicity in turn would have a further punitive action to discourage new hires from coming to Boeing.

A number of questions may arise. First, "What if the Conference doesn't work?" There is little purpose in conjecturing about success of this item. If only ten Engineers pledge to attend or if only one Company accepts our invitation, the conference will obviously fall far short of expectations and might be called off. All we would have lost in that eventuality would be some work and printing cost. We will never know for sure, though, unless we try. As a point of interest, however, several Companies have been sounded out and they all have indicated unofficially that they desire to be included. Second, "Is it ethical?" There is nothing unethical about providing a time and a place for these two groups to get together. After all, it is Boeing policies which provide the impetus for a change, not SPEEA. Anyway, Boeing has set the ethical standard with their Gentlemen's Agreement. Third, "Won't the Gentlemen's Agreement of the Aircraft Industries Association be a hinderance?" Possibly, but we have a method which might get around that for some Engineers, namely, expressing willingness to AIA members to notify Boeing in advance of plans to seek employment elsewhere. At any rate, we might be surprised at the variety of Companies who are sufficiently interested in our qualifications to make attractive offers. Fourth question, "What if

the Company finds out about the Conference?" It would be our intention that they find out well in advance, when some invited Companies send them our letter, if they haven't learned of it sooner by word of mouth.

Two aspects of this conference need to be called to the attention of those who plan to attend. First, it is possible that a contract with Boeing could be signed between the date the conference is called and the date it is held. In order to be fair to the participating Companies, all individual pledges to attend must be honored, if timing prevents calling the Conference off. It is even possible that signing of a contract might have to be delayed until after the conference, if that Conference were to be considered a violation of the new contract. Second, the costs of the conference must be borne by the participants. A typical schedule of fees might be as follows: From the Engineer who accepts an offer, $15 or half of one month's raise, whichever is smaller. From the Company, a registration fee of $25 and $15 per Engineer hired.

Finally, it is planned that we will prepare and distribute to each Engineer who participates a list of suggestions for interviewing. It is hoped that these suggestions will be the distillation of the experiences of those among us who have changed jobs and have learned what they wished they had said or had asked. The type of item contemplated here is to ask questions about amount of and pay rate for overtime; be sure to get a written offer, etc.

[Return Addressed Envelope of Seattle Professional Engineering Employees Association, 308 New World Life Building, Seattle 4, Washington.]

Form 3547 Requested

Mr. Leonard P. Bonifaci
Route 1, Box 635
Mercer Island, Washington M3708

Pledges For Manpower Availability Conference
Sign or Check One Only

1. I pledge to attend this conference, I desire to change Companies, and I authorize the Executive Committee to notify Boeing of my intention not more than two weeks prior to the conference.

.....
Sign

.....
Print

2. I pledge to attend this conference and I desire to change Companies, but I desire not to disclose my intention to Boeing.

.....
Sign

.....
Print

3. I pledge to attend this conference, but do not necessarily desire to change Companies at this time. (Those signing this pledge may not be

called upon to attend if facilities and time do not permit.)

.....

Sign

.....

Print

For those who do not sign one of the first three pledges, please supply the following personal data:

4. I am willing that the conference be conducted, but I will not participate: Yes [ ] No [ ]

5. I desire that no conference be conducted: [ ]
For those who sign one of the first three pledges, please supply the following personal data:

6. Years engineering experience to nearest one-half year. (Do not include undergraduate time, but do include graduate time in college).....years.

7. College degrees awarded and major field. (For example, BS in AE). ..in..; ..in..; ..in...

8. One principal specialty. (Examples: stress analysis, functional testing, development testing, areodynamic analysis, structural design, preliminary design, etc. .....

GENERAL COUNSEL'S EXHIBIT No. 3

Manpower Availability Conference

Organization of Subcommittees

Responsibility: The M.A.C. subcommittees are subcommittees of the Action Committee, and they report to that committee through its designated member, Bob Pearson.

Meetings and Performance: The chairman of each subcommittee will handle assignments within the subcommittee and will arrange such meetings as are necessary for the coordination and performance of the assigned duties.

Reports and Coordination: The subcommittee chairman will meet with the designated member of the Action Committee to report on subcommittee activities and to coordinate the work of the several M.A.C. subcommittees.

Duties: The duties of the various M.A.C. subcommittees are set forth below. Deviations from this outline may be made if experience indicates that such deviations would materially improve the efficiency of the operation.

M.A.C. Registration Subcommittee:

1. Count and tabulate the pledges.

2. Organize the pledge information for presentation to companies as enclosures with the invitation.

3. Prepare forms for the collection of: (a) raise offer data and (b) experience hired data during the conference.

4. Organize the raise offer data and the experi-

ence hired data for the record and for the participating individuals and companies.

M.A.C. Invitation Subcommittee:

1. Assemble the company names and addresses. (It is expected that a list of two to three thousand employers of engineers can be compiled. Certainly, all companies and agencies who are currently advertising for engineers should be included. It is suggested that each entry should be legibly made on a 3x5 card so the entries can be alphabetized and duplicates can be eliminated. Separate divisions of the same company are not necessarily to be considered as duplicates.)

2. Send out the letter of invitation. (The text of this and the other letters will be prepared by the Action Committee, and enclosures will be supplied by the M.A.C. Registration Subcommittee. The MAC Invitation Subcommittee will either actually mail the letters or employ a mailing service.)

3. Send out the letter announcing the date the Conference is to be held.

4. Send out the letter giving the details of operation of the Conference. (Preliminary information on operation of the Conference will have been included in the letter of invitation.)

5. Answer inquiries received in response to the letters (see 2, 3 and 4 above) as directed by the Action Committee.

6. Supply organized reports of all response to the invitation and of inquiries received in response to the letters.

M.A.C. Facilities Subcommittee:

1. Search for suitable halls to rent for the conference and arrange for rental after the required sizes have been estimated.

2. Provide suitable booths for exploratory contacts between the participating engineers and companies.

3. Provide furniture, equipment, telephones, signs, movies and slide projection equipment, etc.

M.A.C. Operations Subcommittee:

1. Draft rules for the conference.

2. Compile suggestions for the interviewers and print and distribute them.

3. Facilitate any printing ordered in advance of the conference by the participating companies.

4. Arrange and schedule private interviews between participating engineers and companies.

5. Distribute and collect "Offer data" cards.

6. Distribute and collect "Acceptance data" cards.

7. Make final arrangements for the conference, e.g., determine the date, arrange address to the participants, invite the press, etc.

8. Obtain Seattle city license for SPEEA's M.A.C. to operate as an employment agency; obtain the necessary surety bond; obtain or prepare contracts necessary for compliance with Seattle ordinance.

Membership: M.A.C. Registration Subcommittee: Bill Bowlby, Chairman, 7901, LO-0766; Bill Hamilton, 7901, WE-0919.

M.A.C. Invitation Subcommittee: Gordy Gud-

munstad, Chairman, 7775, LO-1461; Mat Faletti, 2810; Gordon Gump, 1350, WE-2141; Ray Hodgerney, 1350, FI-0313; Jim Check, 2880, None; John Anderson, 7680, WE-2141; Bob Mulhall, 7297, John Pratt, 7297, MO-4484; Bob Munich, (6) 553 or (6) 542, None; Bill Krause, 1928, LA-2168; Bruce Young, 1928, AD-1467.

M.A.C. Facilities Subcommittee: Ted Hackett, Chairman, 1435, AV-6577; John Rotter, (8) 250, MI-0075; Alan Eid, 1928.

M.A.C. Operations Subcommittee: Clayton Myron, Chairman, 1550, CH-7114; Harold Sanders, 2744, LO-1692; Eugene Corey, (6) 1473, RA-1845.

Action Committee Members: Bob Pearson, 7926, REnton 5-7130; Dan Hendricks, Alternate, 7926, AD-0978.

SPEEA, 3121 Arcade Building, Second and University, Seattle 1, Washington. Phone SEneca 4925. Vol. III Dittos 10-17-52

GENERAL COUNSEL'S EXHIBIT No. 4

[Letterhead of Seattle Professional Engineering Employees Association]

Are You in Need of Additional Engineers?

The Seattle Professional Engineering Employees Association, with a membership of 2300, invites your Company to participate in a Manpower Availability Conference to be held in Seattle about March 9th, 1953. The purpose of the Conference is to put employers of engineers in contact with those of our members who are available for new positions.

Over 500 engineers, scientists and industrial mathematicians are pledged to attend the Conference. Represented in this group are men of assorted lengths of experience and types of training as is portrayed by the attached graphs. A distinction between men who are actively seeking new connections and those whose interest is more dependent upon the advantages of other situations will be noted in the make-up of the graphs.

These engineers are looking for more than a change of scenery. They are employed engineers who feel they would be capable of greater accomplishment in positions where engineering talents are directed more specifically to engineering work and where credit for individual effort and recognition of engineering excellence are more general. They seek a working climate where their training and ability will be more fully utilized and in which compensation is in proportion to talent and productiveness.

In order to provide a better understanding of the type of conference which is contemplated, a general outline of its operation might be of interest. It is planned that the Conference will be conducted in two separate phases.

The first phase will provide the means of quickly and efficiently arranging interviews between the five hundred engineers and the participating companies. This will be accomplished by conducting exposition-like meetings on as many consecutive evenings as appears necessary. At this time, the engineers, perhaps accompanied by their wives, will

visit the various booths, which are to be provided for each of the participating companies.

The representatives of each company will here have the opportunity to address groups of engineers, to explain the company's needs and the advantages of employment with it, and to distribute descriptive literature and application blanks to those who are interested. Secretaries at a centrally located Association booth will then make appointments for private interviews.

Providing an opportunity for the participating companies to show a limited number of motion pictures is under consideration. The Association will provide ditto and mimeograph facilities for any duplicating the company representatives may require. An augmented Association secretarial staff will also be at their disposal.

The second phase of the Conference will consist of individual private interviews. These interviews may be conducted in the hotel rooms of the company representatives or, if it is desired, the Association will provide other suitable facilities.

Inasmuch as these engineers are seeking particular situations wherein their experience and capabilities are most fully utilized, it is recommended that the participating companies send engineering representatives who can accurately present detailed job requirements and describe the conditions of employment on the company's engineering staff. These representatives should come prepared to make firm offers when they interview engineers meeting their requirements.

It is planned that the Conference will be self-liquidating. For this reason, each company will be asked to pay a registration fee of $25 and an additional fee of $10 for each engineer hired as a direct result of the Conference. These fees may be rebated on a pro rata basis if the costs of the Conference are appreciably less than the fees collected. Each engineer who accepts a position as a result of the Conference will be charged a fee of $15.

To insure adequate preparation for the Manpower Availability Conference, commitments to attend will be accepted until February 6, 1953. Answers to the questions appended to this invitation will aid the Association in its planning for the Conference. Receipt of acceptances of this invitation will be acknowledged in a subsequent letter which will announce the date and supply additional details.

Yours very truly,

/s/ Chas. Robt. Pearson,
Director Manpower Availability Service (Licensed and Bonded Employment Agent)

How many engineers do you need?

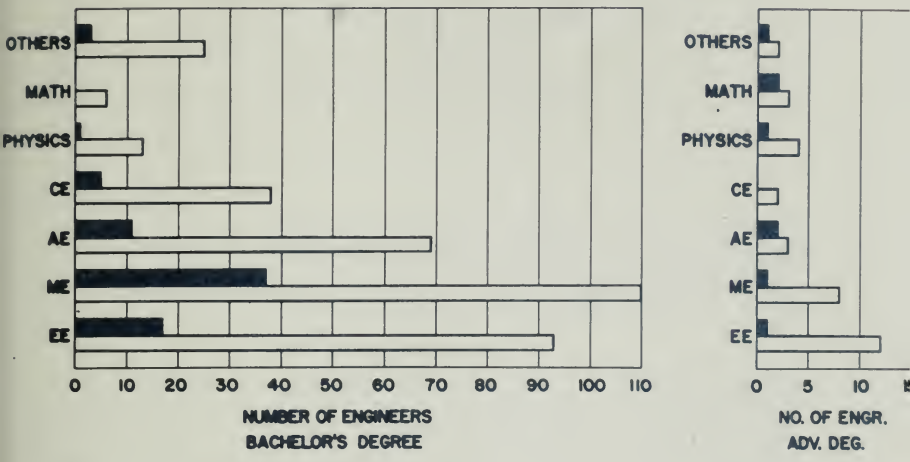
How many representatives will you send?

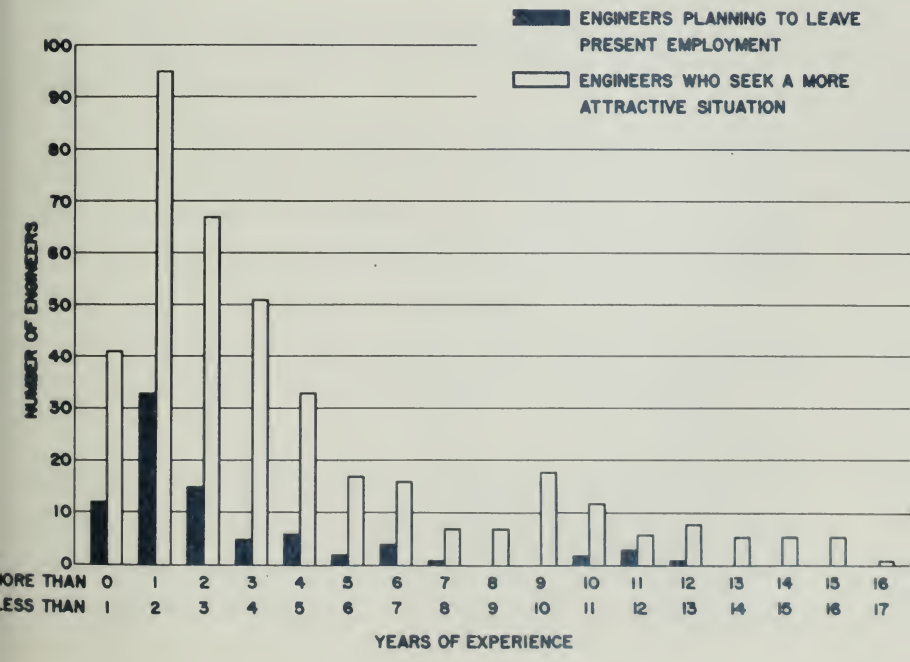
Would you like for the Association to make your hotel reservations? What accommodations are desired?

What special facilities would you wish the Association to supply? Please note that individual sound amplification systems will not be permitted.

EXHIBIT #4 CONT.

STATISTICAL DISTRIBUTION OF ENGINEERS
PLEDGED TO ATTEND MANPOWER AVAILABILITY CONFERENCE





GENERAL COUNSEL'S EXHIBIT No. 5

[Letterhead of Seattle Professional Engineering Employees Association]

Correct Address: 3121 Arcade Bldg., Seattle 1, Wn.

Mr. A. F. Logan, Vice President
Industrial Relations, Boeing Airplane Co.
Seattle 14, Wn.

Dear Sir:

1. This is to advise you that SPEEA has started and will complete a Manpower Availability Conference.

2. Various companies are to be invited to come to Seattle to interview those SPEEA members who have expressed a desire to entertain offers of employment.

3. This conference is being conducted for the following purposes:

(a) To provide members with improved opportunities to bargain for their services. Our membership has requested SPEEA to restore the freedom and privacy of engineers who seek to improve their situations by changing employers.

(b) To obtain data on the true market value of engineers with various amounts of experience.

4. In offering this service to its members, SPEEA has retained an agency for bringing together those engineers and companies who may care to discuss employment possibilities. SPEEA offers no special inducement to engineers to terminate,

nor does it enter in any way into negotiations between the companies and the engineers.

Very truly yours,

/s/ E. M. Gardiner, Chairman
Executive Committee

Rec'd 1/23/53.

GENERAL COUNSEL'S EXHIBIT No. 6

CAW: You were returned to Seattle because the management wishes to discuss your outside activities with you. I will inform them that you are in the plant. Until then I suggest you work on your trip report. 8:15 a.m.

CAW: Would you go into Woody McKissick office? 9:40 a.m.

Logan: I wish to discuss a letter I received from Mac Gardiner last week in which was enclosed this letter signed by you as a licensed and bonded employment agent.

Is this your signature?

CRP: Yes.

Logan: Are you a licensed and bonded employment agent?

CRP: Inasmuch as this question directly concerns my activities in behalf of the SPEEA, I insist that appropriate members of the SPEEA Exec. Comm. be present for further discussion of the question. These members are Mac Gardiner and Dan Hendricks.

Logan: Does this mean that you refuse to answer the question?

CRP: Since Mr. Soderquist is also present and I am not accompanied by the SPEEA representatives concern, and since I have not consulted legal counsel as yet, I cannot answer the question at this time.

Logan: Will you take a look at this facsimile signature and tell me if this is a facsimile of your signature?

CRP: I can only repeat that this discussion cannot continue further until Mr. Gardiner and Mr. Hendricks are present. This matter concerns only my legitimate union activities and cannot be continued on a personal basis.

Logan: * * * * *

This has nothing to do with SPEEA.

Are you a licensed and bonded employment agent?

We are not talking about the your SPEEA membership or activities.

If you are an employment agent and working at it, I have some suggestions for you.

CRP: Since the letter you have is on a SPEEA letterhead, and since any and all employment agency activities in which I might enter are in behalf of SPEEA, this is a SPEEA matter and must be handled as such rather than as a personal inquisition. Do you intend to call in the responsible SPEEA officials?

Logan: This is neither an inquisition or personal. This is an attempt to get some facts from you.

Logan: I wish you would listen to me.

I'll get my secretary to take it down and give a carbon copy to you.

CRP: I will listen. You have my attn.

Logan: Transcribed notes.

CRP: This discussion cannot be continued until the appropriate SPEEA representatives are present, and I refuse to acknowledge your comments as other than direct SPEEA business.

Logan: You have had your chance to make your choice * * *

CRP: Whereas the timing * * *

Logan: Is that your statement or have you something more to say?

CRP: Yes and no.

Logan: * * * Transcribe notes.

GENERAL COUNSEL'S EXHIBIT No. 7

January 27, 1953, 10:00 a.m.

Continuing discussion started without stenographic reporting:

L: I am talking to Charles Robert Pearson. I will, first, say, and I repeat for the third time, this has nothing to do with your membership in or activities on the behalf of SPEEA. I am interested rather in whether you are or are not a licensed and bonded employment agent. Furthermore, I am interested in whether you are or are not working as an employment agent at this time. I have given you an opportunity to discuss this informally, but you chose not to do so. So far you have insisted on

reducing everything, at least that you have said, to writing. So we now will reduce it all to writing. I will furnish you with a carbon copy of the stenographic transcription.

It is our belief that in the absence of any information from you and your refusal to give us any information with respect to your alleged activities as an employment agent we can make a reasonable assumption that the allegations are true. You have had reasonable opportunity to inform us otherwise if such were the case. We do not believe that you can do justice to such activities and your work as an employee of Boeing when carried on simultaneously. And, therefore, the suggestion which I had intended to make and now make is that you elect to give up one or the other of these activities. We do not propose that you shall proceed to carry both of them out. Now, would you like to make that choice?

P: (Writing)

L: You don't have to write it. You will get it all. You will get a copy of the transcribed notes.

P. (Continues writing)

P: This discussion cannot be continued until the appropriate SPEEA representatives are present and I refuse to acknowledge your comments as other than direct SPEEA business.

L: You have had your chance to make your choice, and it is obvious you have no intention to do that, so that places us in the position where we have to make our own decision as to which of these activities; namely, the operation of an employment

agency or your assigned work as a Boeing employee are going to be paramount in your mind. We will, therefore, make the decision that your work as an employee at Boeing would be entirely too greatly impaired by your outside activities as an employment agent, and we are therefore unwilling to permit you to continue such activities and remain in our employ. Our decision for the reasons stated is that you are being terminated forthwith.

P: (Reads from previously written notes taken from his pocket.)

P: Whereas the timing of this action is definitely connected with our release of the manpower availability conference invitations in behalf of the Seattle Professional Engineering Employees Association this action can only be interpreted as being a retaliatory action against the SPEEA and discrimination against me personally and retaliation against my legitimate union activities. I therefore demand that this action be dropped and that the appropriate executive committee liaison officer and chairman be present at any further discussion of it.

L: Is that your statement?

P: (Silence)

L: In other words, is it my turn to answer? That is what I am trying to find out. Or have you something more to say?

P: Yes and no.

L. (To secretary) Did you get that? Yes and no. I don't know what he means, but his answer is yes and no. I will answer it anyway.

L: You have a right to any views you care to

express, here or elsewhere. And I have a right to disagree with you, here or elsewhere. Hence, I do not accept the foregoing statement by you of the implications of this action on my part. And there will be no further discussion of this matter with you as an employee of Boeing. Now, I have nothing more to say, have you?

P: (Silence)

L: If you have, you have an opportunity to say it and get it in this record.

P: (Silence)

L: As far as I am concerned, the interview and the discussion is over. Now, Mr. Soderquist, will you see that the necessary steps are taken to implement Mr. Pearson's termination forthwith.

GENERAL COUNSEL'S EXHIBIT No. 8

Appendix B

Dept. 481; Clock 7188; Name Pearson Charles Robert; Social Security Number 252-12-2544. Emp: 7-31-50.

Boeing Airplane Company, Seattle 14, Wash.

Termination of Employment

Male [x]. Job number 07-12. Rate 247. Shift 1. Effective Date 1-27-53. Hours worked this date 8. Job title Engr. Designer A (B-52A Pneumatics). Permanent address 19725 Marine View Dr. S.W., Seattle 66, Wash.

Dismissal [x]

* * * * *

Remarks: Dismissal: Refusal to answer questions relative to outside activities as employment agent.

/s/ W. W. McKissick,
Foreman or Supervisor

Required in cases of dismissal only: Signed by A. A. Soderquist, Gen. Supt. or Division Head.

GENERAL COUNSEL'S EXHIBIT No. 9

[Letterhead of Boeing Airplane Company]

February 11, 1953

Mr. Charles Robert Pearson
Seattle, Washington

Dear Mr. Pearson:

Seattle Professional Engineering Employees Association has requested a more particularized statement of the Company's reason for terminating your employment on January 27, 1953.

> The entry on your termination slip is as follows: "Refusal to answer questions relative to outside activities as employment agent."

In our opinion this statement summarizes the position taken by you at the conference between you and the undersigned on January 27, 1953, at which you were informed of the reason for your termination. By reason of the conference which preceded it, this entry was considered as adequate but, in response to SPEEA's request, this letter will serve to review the matter.

On January 23rd we were notified in letter form by SPEEA that that organization had started and intended to complete what SPEEA has referred to for several months as the "Manpower Availability Conference," and that it had retained an agency to arrange the interviews. With this letter was a printed copy of an invitation to this conference bearing a facsimile of your signature and indicating that you were a licensed and bonded employment agent acting as "Director Manpower Availability Service."

It was clearly apparent from this letter and invitation that SPEEA had started and intended to carry out a nationwide solicitation of our business competitors, and others who compete with us in hiring engineers, in an effort to bring about a situation in which substantial numbers of engineers would leave the employ of this Company, for employment elsewhere.

It is obvious that even if there were an adequate supply of engineers at the present time, such a program would be against the best interests of Boeing Airplane Company. However, as you know, there is not an adequate supply of engineers at this time; the Company is in serious need of more engineers and has been conducting an extensive nation-wide advertising campaign designed to fill this need. Thus, the invitation signed by you is part of a deliberate program which is very damaging to the Company.

For the purpose of determining whether you had

authorized the use of what appeared to be your signature on the invitation and whether you were actually engaged in the program, we wired you on January 24, 1953, to arrange a conference on this subject.

You have your notes and the stenographic record of the conference on the 27th. After identifying the facsimile on the invitation as your signature, you in effect refused to answer further questions.

As your work in connection with the program is clearly against the best interests of the Company and in violation of your obligations as an employee, you were asked to elect either to give up your work as an employment agent or to leave the Company's employ. You refused to make such an election, leaving the Company no alternative but to terminate you.

It seems to us that while an employee continues at work, continues to draw salary from a company and is not on strike, it is no more than proper for that company to require that he do nothing intentionally which would have the effect of seriously damaging that company. On the other hand, it does not seem to us that an employer should be compelled to continue paying a salary to an employee who engages in a deliberate program resulting in serious damage to the Company, whether or not his activities have been authorized or ratified by a collective bargaining organization of which he is a member.

For these reasons, your dismissal is considered proper.

Yours very truly,

/s/ A. F. Logan, Vice President
Industrial Relations

GENERAL COUNSEL'S EXHIBIT No. 10

[Letterhead of Boeing Airplane Company]

Mr. E. M. Gardiner October 13, 1952
Chairman Executive Committee
Seattle Professional Engineering Employees Assn.
New World Life Building, Seattle 4, Washington

Dear Mr. Gardiner:

In compliance with the request made at the meeting October 2, there is submitted herein a statement explaining the basis for the development of the so-called "Gentlemen's Agreement" and how it is applied by Boeing. The following statements have been made verbally to the SPEEA Executive Committee in recent meetings.

The Aircraft Industries Association is made up of member companies engaged in the manufacture of aircraft engines, propellers, and equipment. This Association has mutually agreed on a resolution condemning the practices of pirating help from one another. The purposes of this resolution are to limit or prevent the establishment of hiring halls by each aircraft company in the area of each of the other companies for the purposes of pirating labor. In the

absence of this resolution, it has been demonstrated in the past that such hiring halls would result. The consequences of such operations would be of the nature of auctions or stock markets bidding for the services of aircraft employees. In the case of engineers and similar professional employees where the commodity desired is not something that can be weighed or measured, the character of such an auction would be questionable. The consequences would have a disruptive effect upon the whole aircraft development effort and would establish an atmosphere very unsettling to the engineer himself. The character of the engineer's job is not one which would be enhanced by frequent moves which would naturally result from such hiring hall activities.

The resolution mentioned above is often referred to as the "Gentlemen's Agreement" and many misunderstandings have grown up with respect to it. One of these is that the agreement works to restrict the freedom of the employee in seeking and finding employment elsewhere, and that it thus works to his disadvantage. It is believed that a full understanding of the method of the procedures used under this resolution would correct any such misapprehension. A typical operation of the resolution is illustrated as follows:

Employee Jones of Aircraft Company A, either due to dissatisfaction with his job, his rate of pay, the climate, or due to reasons of health, personal reasons, or otherwise, writes to Aircraft Company B expressing his interest in employment with that company. Company B replies, expressing its interest

but asking him permission to contact his employer before entering into negotiations toward an agreement. If the employee gives his consent, Company B writes to Company A telling it that it has been contacted by Employee Jones seeking employment with it. The permission of Company A is requested before negotiations are opened with the employee. Company A then contacts its employee to determine the cause for his dissatisfaction and discusses with him ways and means of satisfying him to remain in its employment. If the employee still wishes to move and for personal reasons or otherwise is not dissuaded in his desire, then Company A gives permission to Company B to negotiate.

Now, during the discussion between the employer and the employee there is every advantage accruing to the employee at this point. In some cases the employer may offer a higher wage, a reassignment, or some other correction of an unsatisfactory condition which he may not have known existed. If these circumstances can be corrected and the employee satisfied to remain in his present job, then the employee's situation has been improved and the added cost and disruption to his family life avoided. On the other hand, if the employee still wishes to move, Company A conveys its permission to Company B to negotiate.

While it is unusual for applicants to refuse permission to contact present employers, occasionally permission is refused. In such cases our company is reluctant to show any further interest because we are prevented from determining the man's ability

in the opinion of his employer. There have been cases wherein unadvised employees of some aircraft companies have misunderstood and misstated the purpose of those companies in respect to this employment policy. Such cases should not be construed as being examples of its operation.

It is well to note here that the resolution is only that. Any representation that a contract exists is in error. The Aircraft Industries Association is not organized in a manner that contracts between its members for association purposes are possible.

The aircraft companies at large, and this one in particular, are fully aware that an employee who has been frustrated in an attempt to move is an unhappy and dissatisfied employee, and therefore no effort is made to dissuade a determined purpose to move. Thus, arbitrary refusals on the part of companies in reply to requests for permission to negotiate with one of their employees are very rare indeed.

It is believed that the best interest of all parties is served when negotiations of this character are considered openly and aboveboard.

Yours very truly,

/s/ A. F. Logan, Vice President
Industrial Relations

GENERAL COUNSEL'S EXHIBIT No. 11

[Letterhead of Chance Vought Aircraft]

Engineering Personnel PS-5-2521 June 26, 1952

Mr. Charles-Robert Pearson
427 Grandey Way, Renton, Washington

Dear Mr. Pearson:

With reference to your letter of June 13 we regret to inform you that under our company policy, as stated in our original letter of June 5, we will not negotiate with you until we have had your permission to contact your present employer.

Very truly yours,

United Aircraft Corporation Chance Vought Aircraft Division
/s/ G. H. Orgelman, Supervisor, Engineering Personnel

GHO:js

GENERAL COUNSEL'S EXHIBIT No. 12

[Letterhead of Chance Vought Aircraft]

Engineering Personnel PS-5-2504 June 17, 1952

Mr. Charles-Robert Pearson
427 Grandey Way, Renton, Washington

Dear Mr. Pearson:

We are in receipt of your letter of June 13 in which you submitted a resume of your experience to be considered as an application for possible employment. We are interested in your background, but in order that we may give full consideration to your application, please complete the enclosed form

and return it to us as soon as possible.

Due to the fact that you are presently employed by a member of the aircraft industry, we will be unable to negotiate with you until we have received your permission to contact your present employer. Please advise us of your decision with regard to this matter.

We shall look forward to your early reply.

Very truly yours,

United Aircraft Corporation, Chance Vought Aircraft Division
/s/ G. H. Orgelman, JLI Supervisor, Engineering Personnel

JLI:js

GENERAL COUNSEL'S EXHIBIT No. 13

[Letterhead of Lockheed Aircraft Corporation]

Mr. Charles R. Pearson June 25, 1952
427 Grandey Way, Renton, Washington

Dear Mr. Pearson:

We have reviewed your application of June 17, 1952, with interest.

It is the policy of Lockheed Aircraft Corporation to adhere strictly to the agreement of Aircraft Industries Association which prohibits us from offering employment to persons employed by member companies. Since you are presently employed by Boeing Airplane Company, a member of this association, our policy prohibits us from discussing a position at this time.

However, we appreciate the interest you have expressed in our Georgia Division.

Yours very truly,

/s/ J. M. Wade, Jr.,
Employment Manager

JMW/JH/vmh

GENERAL COUNSEL'S EXHIBIT No. 14

[Letterhead of North American Aviation, Inc.]

Mr. Joseph P. Ivaska January 20, 1953
18135 Brittany Drive, Seattle 66, Washington

Dear Mr. Ivaska:

It may confuse you to have correspondence with so many representatives of North American.

On a recent recruiting trip on the MIT campus Mrs. Evelyn Yates of the Alumni Placement Bureau recommended you as having excellent potential for employment in our organization. On my return to Downey it was evident that correspondence was under way and also that you had not seen fit to complete our formal application for employment. You are probably concerned lest this AIA affiliation imposes insurmountable restrictions. Actually, our affiliation with AIA has no bearing on our employment opportunities except that in accordance with company policy we do not proselyte engineers from organizations engaged in vital defense work. If you are interested in employment with us the chain of events will be as follows:

Your application will be studied by the interested

group, or groups, and if they desire that an offer be made we will merely ask your permission to contact Boeing to determine if they consider our work as important or possibly more important than that being performed by them. If they have determined in conference with you that you desire to leave the Seattle area they may approve our negotiating with you, in which case we will make our formal offer. If they feel that your loss would be too great and that you will stay with them if no other company interferes we will gracefully withdraw.

Mr. J. P. Morris of our Propulsion Development Section is particularly interested in controls as related to our rocket engine. Your work in servos, etc., is directly applicable to the work he is doing and you would undoubtedly be very interested in his field.

Another application is enclosed for your convenience in the event that you should feel it desirable to make application with us. At any rate, we would certainly appreciate being advised of your decision.

Very truly yours,

North American Aviation, Inc.,
/s/ W. T. Rinehart, Engineering Personnel
Missile and Control, Equipment
Departments

WTR:asi—encl.

GENERAL COUNSEL'S EXHIBIT No. 15

[Letterhead of North American Aviation, Inc.]

Mr. Joseph P. Ivaska 8 January 1953
18135 Brittany Drive, Seattle 66, Washington

Dear Mr. Ivaska:

Thank you for your letter of December 30, 1952, to the attention of Mr. H. W. Schroeder of this office.

Your professional qualifications are of interest to us, and if it is your intention to relocate in Southern California, we would appreciate your completing the enclosed application forms and returning them to us. Should a suitable opening be available since you are now in an essential industry, we would like to have your permission to contact your present employer before negotiating further with you.

Thank you for your interest in our organization.

Very truly yours,

North American Aviation, Inc.
/s/ L. G. Baldwin, Engineering Personnel
Missile & Control Equipment Depts.

LGB:jb—Encls.

GENERAL COUNSEL'S EXHIBIT No. 16

[Letterhead of Seattle Professional Engineering Employees Association]

February 13, 1953

Mr. A. F. Logan, Vice President, Industrial Relations, Boeing Airplane Company
Seattle 14, Washington

Dear Mr. Logan:

This communication outlines our proposal for increases in the basic salary structure and base salary rates of Boeing employees under the jurisdiction of the Seattle Professional Engineering Employees Association and for a revised formula for computing supplemental compensation for scheduled overtime work for such employees in the "exempt" classification.

We propose that:

(a) the base salary rate of each said employee be [per biweek E.M.G.] increased by 9.7% to the nearest one dollar, [A] and that all minimum and maximum rates for the various SPEEA classifications be increased by 9.7% to [per biweek E.M.G.] the nearest one dollar, [A] and

(b) the method of computing the hourly rate for scheduled overtime work of employees in the "exempt" classifications be revised from the present "$3.00 per hour, or straight time, whichever is greater" to time and one-half on all base rates up to and including $200.00 bi-weekly, and to straight

time plus $1.25 per hour on all base rates above $200.00 bi-weekly, and

(c) all of the above provisions are to be made effective as of the date July 1, 1952, and are to apply to all time and scheduled overtime worked by employees in SPEEA classifications whether or not such employees are still in the employ of the Boeing Airplane Company, and

(d) this proposed agreement shall have as its next anniversary date July 1, 1953, and

(e) this proposed agreement shall contain a sick leave clause substantially incorporating the pertinent portions of the existing Boeing Management Procedure No. 552 on the subject: "Sick Leave", and

(f) all other provisions of this proposed agreement shall be substantially those of the agreement in effect at the opening of the current negotiations.

It is the intention of the Executive Committee to recommend rejection of any offer made by the Boeing Airplane Company until such time as Mr. Charles Robert Pearson is reinstated unequivocally. Such reinstatement shall not be in any way contingent upon his relinquishing his prerogative of managing the SPEEA Manpower Availability Conference.

Your very truly,

/s/ E. M. Gardiner, Chairman
Executive Committee

GENERAL COUNSEL'S EXHIBIT No. 17

[Letterhead of Boeing Airplane Company]

Seattle Professional Engineering Employees Association
New World Life Building, Seattle, Washington

March 2, 1953

Gentlemen:

In your letter of February 13, you offered a revised contract proposal, but indicated in the last paragraph that further bargaining on the matter of a new contract between the Company and you would be fruitless unless Mr. Charles R. Pearson, recently terminated by the Company, were first reinstated.

We are by this letter offering reemployment to Mr. Pearson to his former position as of the time he is available and returns to work, and in doing so, we wish to make our position clear to you.

First, although we consider the Pearson matter to be entirely beyond the scope of the contract bargaining negotiations between the parties, we do not want to see any controversy of this nature impair negotiations that directly affect such a large number of engineers.

Second, you have been very candid in stating to us the results of the Manpower Availability Conference, which as we understand it, did not attain the objectives for which it was intended. Mr. Pearson's termination has been reviewed in light of this fact and the fact that, to our knowledge, further activities in connection with this Conference are not anticipated. The offer to reemploy him is not to be interpreted as reflecting any different position

on the part of the Company as to activities of this type conducted by those who are not on strike but continue to draw salary. We cannot consider it proper to believe that such an employee has the right to conduct such activities to the detriment of the Company.

We are making reply, by separate letter, to that portion of your letter of February 13, which contains your revised contract proposal.

Yours very truly,

/s/ Jas. D. Esary, Jr.,
Labor Relations Manager

GENERAL COUNSEL'S EXHIBIT No. 18

[SPEEA Letterhead]

Mr. A. F. Logan, Vice-President March 31, 1953
Industrial Relations Division
Boeing Airplane Company, Seattle 14, Washington

Dear Sir:

In a meeting held on March 5, 1953 between representatives of the Boeing Airplane Company and SPEEA, a verbal agreement was reached by both parties concerned whereby the rehiring of Chas. Robt. Pearson was effected. The proposal contained the agreement to rehire Mr. Pearson without prejudice and with all rights and privileges restored which the employee had acquired prior to his termination. It is the desire of the present Executive Committee to have enumerated in writing what

these rights and privileges are. It is our belief that they may be enumerated as follows:

1. Sick-leave accumulated prior to termination.

2. Seniority dating back to the original date of employment with BAC.

3. Eligibility for the 6% increase and retroactive pay back to July 1, 1952.

4. Should Chas.-Robt. Pearson wish to leave BAC his referral from the company would be based on his demonstrated performance and engineering abilities, without reference to his activities with the MAC.

Your written concurrence on the above items would be appreciated.

SPEEA's acceptance of the above agreement is not to be interpreted as reflecting any different position in regard to the legality and ethics of this type of activity. We do consider it proper and ethical and legal to carry on such activities on behalf of service and information to our membership.

Very truly yours,

/s/ F. D. Frajola, Chairman
SPEEA Executive Committee

GENERAL COUNSEL'S EXHIBIT No. 19

[Letterhead of Boeing Airplane Company]

Mr. F. D. Frajola, Chairman April 7, 1953
SPEEA Executive Committee, Seattle Professional Engineering Employees Association
3121 Arcade Building, Seattle 1, Washington

Dear Mr. Frajola:

This is in reply to your letter of March 31, 1953, in which you state in part:

"In a meeting held on March 5, 1953 between representatives of the Boeing Airplane Company and SPEEA, a verbal agreement was reached by both parties concerned whereby the rehiring of Chas. Robt. Pearson was effected. The proposal contained the agreement to rehire Mr. Pearson without prejudice and with all rights and privileges restored which the employee had acquired prior to his termination * * *"

Apparently you are misinformed completely as to what took place in the meeting referred to above. At that meeting in response to questions asked by the SPEEA representatives present, I commented that the Company, in its letter to SPEEA dated March 2, 1953, had stated why and upon what basis it would reemploy Mr. Pearson. For your convenience the pertinent paragraphs of that letter are quoted:

"We are by this letter offering reemployment to Mr. Pearson to his former position as of the time he is available and returns to work, and in doing so, we wish to make our position clear to you.

"First, although we consider the Pearson matter to be entirely beyond the scope of the contract bargaining negotiations between the parties, we do not want to see any controversy of this nature impair negotiations that directly affect such a large number of engineers.

"Second, you have been very candid in stating to us the results of the Manpower Availability Conference, which as we understand it, did not attain the objectives for which it was intended. Mr. Pearson's termination has been reviewed in light of this fact and the fact that, to our knowledge, further activities in connection with this Conference are not anticipated. The offer to reemploy him is not to be interpreted as reflecting any different position on the part of the Company as to activities of this type conducted by those who are not on strike but continue to draw salary. We cannot consider it proper to believe that such an employee has the right to conduct such activities to the detriment of the Company."

You will note that sick leave, seniority, and the 6% adjustment were not mentioned in this letter nor were they discussed at the meeting on March 5.

However, the question as to the type of referral the Company would give Mr. Pearson was raised by the SPEEA representatives. They were informed that the Company would reply to inquiries regarding Mr. Pearson as follows:

> "Technical service satisfactory. Terminated because outside activities interfered with employment."

and that if Mr. Pearson returned to the payroll, such inquiries, after that date, would be handled on the basis of his performance after such return.

On March 17, Mr. Pearson was reemployed pursuant to the offer set forth in our letter of March 2, quoted above. On its own initiative, the Company restored his company service, sick leave accumulated before termination, his extended vacation eligibility, and applied the 6% increase for time worked retroactively to July 1, 1952.

Yours very truly,

/s/ Jas. D. Esary, Jr.,
Labor Relations Manager

RESPONDENT'S EXHIBIT No. 1

[Letterhead of Seattle Professional Engineering Employees Association]

Mr. William H. Allen, President April 2, 1952
Boeing Airplane Company, Seattle 4, Washington

Subject: Agreement between Boeing Airplane Company and Seattle Professional Engineering Employees Assn., dated August 31, 1952.

Dear Sir:

In compliance with Article X of the subject agreement we hereby notify the Company that we desire to amend the agreement by negotiating certain changes which we feel are necessary to improve the morale of the Engineering Division and to establish the engineer in his proper place in

relation to the rest of society with regard to his salary and working conditions.

The following items are those which we desire to discuss:

1. General Raise
2. Overtime

It is recognized that other subjects may be brought up during the course of negotiations. It is desired that meetings be scheduled twice weekly and that in no case should the period between meetings exceed one week.

In accordance with the revised reopening date agreed to during the 1951 negotiations, it is suggested that the first meeting date be April 7, 1952.

Very truly yours,

Seattle Professional Engineering
Employees Association
/s/ E. M. Gardiner, Chairman
Executive Committee

EMG:vm

RESPONDENT'S EXHIBIT No. 2

[Letterhead of Boeing Airplane Company]

In reply refer to 405

Mr. E. M. Gardiner April 3, 1952
Chairman, Executive Committee, Seattle Professional Engineering Employees Association
New World Life Bldg., Second and Cherry,
Seattle, Washington

Dear Sir:

Your letter of April 2, 1952 addressed to Mr.

William M. Allen expressing your desire to open the contract for negotiation of certain changes has been referred to the writer for appropriate reply.

The Company representatives will be available to meet with your committee in the Engineering conference room No. 403 at 10:00 a.m. on Monday, April 7, 1952.

Yours very truly,

/s/ A. F. Logan, Vice President
Industrial Relations

RESPONDENT'S EXHIBIT No. 3

[Letterhead of Boeing Airplane Company]

In reply refer to 403
Mr. E. M. Gardiner June 27, 1952
Chairman, Executive Committee, Seattle Professional Engineering Employees' Association
New World Life Building, Seattle 4, Washington

Dear Mr. Gardiner:

This communication outlines our offer to increase the basic salary structure and base salary rates of employees covered under our agreement with your organization, and to revise the formula for computing supplemental compensation for scheduled overtime work for such employees in the "Exempt" classifications. This offer is subject to prior approval by the United States Air Force and the Wage Stabilization Board.

Briefly, we propose:

(a) to increase the base salary rate (as of July

1, 1952, under the current Agreement) of each employee covered by that Agreement by six per cent to the nearest one dollar and to increase all minimum and maximum rates appearing in Appendix "A" to the current Agreement by six per cent to the nearest one dollar; and

(b) to revise the method of computing the hourly rate for scheduled overtime work of employees in the "Exempt" classifications from the present "$3.00 an hour, or straight time, whichever rate is greater" to time and one-half on all base rates up to and including $200 bi-weekly, and to straight time plus $1.25 an hour on all base rates above $200 bi-weekly.

In view of the fact that there has been a delay on our part in presenting this offer, we propose to make the effective date July 1, 1952, if the offer is accepted by you within the next sixty days.

Yours very truly,

/s/ A. F. Logan, Vice President
Industrial Relations

RESPONDENT'S EXHIBIT No. 4

[Letterhead of Seattle Professional Engineering Employees Association]

Mr. A. F. Logan July 10, 1952
Vice President of Industrial Relations
Boeing Airplane Company, Seattle, Washington

Reference: Your letter, BAC 403

Dear Mr. Logan:

In reply to your offer of June 27, SPEEA rejects this offer.

Very truly yours,

/s/ E. M. Gardiner, Chairman
SPEEA Executive Committee

RESPONDENT'S EXHIBIT No. 5

[Letterhead of Seattle Professional Engineering Employees Association]

Mr. A. F. Logan August 25, 1952
Vice President of Industrial Relations
Boeing Airplane Company, Seattle 14, Wn.

Subject: Second Contract Agreement Proposal.
Reference: Percentage Raise Proposal Analysis of May 7th, 1952. Your letter No. 403.

Dear Mr. Logan:

The following is a revised proposal containing those provisions which the Executive Committee considers as equitable and practical in view of the discussions which have been continuing with Company representatives since April 7th, 1952.

Major Provisions

1. Base Pay Raise: 13.5% to all those in the SPEEA classifications. This percentage to be retroactive to July 1, 1952.

2. Overtime: Those provisions offered in your letter of June 27th (No. 403). "Time and one-half on all base rates up to and including $200 bi-weekly and to straight time plus $1.25 an hour on all base rates above $200 bi-weekly."

3. Merit Raises: The average of merit raises granted to exempt and non-exempt classifications shall be raised to 7% for each classification.

4. Incentive Pay: 20% of that incentive compensation allocation authorized by Company Statutes shall be distributed to SPEEA personnel.

5. Pensions: Evidence of good faith in progress toward a pension plan can be shown by progress summaries each two months. If no pension plan is submitted by next March, 2½% shall be added to item 1 retroactive to July 1st, 1952.

6. Engineering Efficiency System: A system satisfactory to SPEEA and Boeing operating procedures which will provide for the transmittal of constructive suggestions to Boeing on matters of improved engineering utilization. This system will also allow a check as to the efficacy of the suggestions considered and adopted.

7. Time Clocks: To be discontinued for all SPEEA classifications.

8. Salary Data: (a) Annual review of "Anonymous Personnel Record" supplied each January 15th as of January 4th, starting with January 15th,

1952. (b) New entries to above in full to be supplied each January 15th as of January 4th, starting with January 15th, 1952. (c) Average merit raises in each classification each January 15th and July 15th. (d) Average reclassification raise into each classification supplied each January 15th and July 15th.

9. Sick Leave: To be included in the contract as written in the "Management Procedures" as of this date.

10. Area Representative System: In the major organizational units of the Company (Engineering and Manufacturing) and equitably distributed among the departments, the Association shall designate one employee as Representative for every ten (10) employees or major fraction thereof, and one of every five (5) such Representatives or fraction thereof as a Senior Representative. If the number of employees in any major organizational unit of the Company calls for only four (4) or less Representatives, the Association may designate any one of these as Senior Representative.

All Representatives and Senior Representatives shall be employees of the Company.

The number and location of Representatives and Senior Representatives may be adjusted by mutual agreement betweeen the Company and the Association. In the event a Representative or Senior Representative is to be transferred, the Company will, in so far as is practicable, notify the Association four (4) days in advance of the effective date of such transfer, and if the Association desires, the

Company will discuss such transfer with the Association. If such transfer is made at the Company's request, the Association will designate an additional Representative to assume the post of the transferred Representative if he cannot be placed by the Association as a Representative in his new assignment. Such transferred Representative or Senior Representative will complete his year of office with its attendant privileges.

Representatives and Senior Representatives may use a reasonable amount of time during working hours in the performance of their duties required in the administration of this Agreement, but shall inform supervision if it is necessary for them to leave their work area.

Very truly yours,

/s/ E. M. Gardiner, Chairman
Executive Committee

EMG:vm

RESPONDENT'S EXHIBIT No. 6

[Letterhead of Seattle Professional Engineering Employees Association]

Mr. James Esary, Jr. July 21st, 1952
Boeing Airplane Company, Seattle 14, Washington

Dear Sir:

You are hereby notified that on and after thirty-one days from date hereof the Agreement (as amended) between Boeing Airplane Company and Seattle Professional Engineering Employees Asso-

ciation dated August 31, 1951 shall be automatically terminated.

SPEEA meanwhile stands ready to continue negotiations for a new contract.

Very truly yours,

/s/ E. M. Gardiner, Chairman
EMG:vm SPEEA Executive Committee

RESPONDENT'S EXHIBIT No. 7

[Letterhead of Boeing Airplane Company]

In reply refer to 405
Mr. E. M. Gardiner July 24, 1952
Chairman, SPEEA Executive Committee
New World Life Bldg., Second & Cherry
Seattle 4, Wash.

Dear Sir:

Your letter of July 21, 1952 giving notice that on and after thirty-one days from the date thereof the agreement (as amended) between Boeing Airplane Company and Seattle Professional Engineering Employees Association dated August 31, 1951 shall be automatically terminated is acknowledged.

The Company stands ready to continue negotiations for a new contract and meet at all reasonable times with your organization for that purpose.

Yours very truly,

/s/ Jas. D. Esary, Jr.
JDE:CS Labor Relations Manager

RESPONDENT'S EXHIBIT No. 8

[Letterhead of Boeing Airplane Company]

Mr. E. M. Gardiner September 3, 1952
Chairman, Executive Committee Seattle Professional Engineering Employees' Association
New World Life Bldg., Seattle 4, Washington

Dear Mr. Gardiner:

As the result of careful consideration of the written proposals you submitted under date of August 26, 1952, and the arguments presented by you in negotiation, we wish to extend our written offer as submitted under date of June 27, 1952, as follows:

> We are willing to write into an Agreement with S.P.E.E.A. a sick leave clause substantially incorporating the pertinent portions of our existing Management Procedure No. 552 on the subject: "Sick Leave," copy of which is attached.

In all other particulars, a review of the whole situation as it is apparent to us, including recent developments in negotiation, has not led us further to modify our previous offer.

/s/ A. F. Logan, Vice President
Industrial Relations

Attachment

RESPONDENT'S EXHIBIT No. 9

November 20, 1952

Seattle Professional Engineering Employees'
Association, New World Life Building
Second and Cherry, Seattle 4, Washington

Gentlemen:

Contract negotiations now have extended over a period of approximately seven months, including meetings in August and September with the Federal Mediation and Conciliation Service. It is believed that these negotiations have afforded both parties ample opportunity to explore and bargain with respect to the various respective demands and proposals and to study the information and data submitted by both parties in these negotiations. Under these circumstances and with this background it appears advisable that the Company state its ultimate position with respect to the various issues under negotiation, and such position is as follows:

The Company proposes the execution of a new contract between the parties; to become effective upon the date of acceptance of this proposal, if accepted; to cover a one-year period from such date; and to embody terms and provisions similar to those in the previous contract between the parties, with the following four numbered exceptions:

1. Bi-weekly base salary rates and rate ranges to be converted to weekly salary rates and rate ranges by dividing the former by two; the resulting

weekly rates and ranges then to be increased, effective July 1, 1952, by six percent (to the next higher cent where fractional cents result); subject to approval of the Wage Stabilization Board and Air Force. Pay dates to occur every two weeks, as in the past.

2. The method of computation of the hourly rate for scheduled overtime work of employees in the "Exempt" classifications to be revised, effective January 2, 1953, from the present "$3.00 an hour, or straight time, whichever rate is the greater" to time and one-half on all base rates up to and including $100 weekly, and to straight time plus $1.25 an hour on all base rates above $100 weekly.

3. We concur with your proposal to write into the contract a sick leave clause substantially incorporating the pertinent portions of an existing Management Procedure No. 552 on the subject: "Sick Leave," copy of which is attached.

4. With respect to your proposals regarding improving efficiency in the utilization of engineers as well as the punching of time clocks, we propose the introduction of a new classification in the "Exempt" category to be entitled "Associate Engineer" and to be assigned to Salary Grade 4, which currently embraces the titles "Aerodynamicist 'B,'" "Stress Analyst 'B,'" and "Field Service Representative 'B.'" The basic intent with respect to the utilization of the new classification is to enable management to accord a promotional channel for design and project engineers similar to that currently available for specialists in aerodynamics and stress, with the

result that those engineers assigned to the Junior Engineer "A" classification who have shown sufficient progress by demonstrating their ability in creative engineering work, apart from those specialized staff fields, may have the same avenue opened within the salary structure. This would in fact entail an earlier advance to the exempt category which does not require clock punching. The Junior Engineer "A" classification would continue to be utilized to provide a range for up-grading employees with increased experience and ability who are potential material for the Associate Engineer classification but have not yet demonstrated their professional ability by their performance under the circumstances present. Employees in the "Non-exempt" category who are not considered to have professional potential will be transferred to the appropriate draftsman classification to continue as non-professional employees. The titles "Aerodynamicist 'B'" and "Stress Analyst 'B'" would be absorbed into the new classification "Associate Engineer" and would be discontinued under this program, the title "Field Service Representative 'B'" remaining as it is.

The foregoing proposal for a new contract shall remain effective for your consideration for a period of thirty days from the date of this letter.

As to proposals you have made with respect to other subjects of negotiation:

(a) Line Management has recently been authorized to use up to three percent for merit increases for January 2, 1953, and July 3, 1953, in accordance

with the amount allowable under applicable Wage Stabilization regulations and at the discretion of Line Management.

(b) The Company is not willing to accede to SPEEA's proposal on incentive compensation. The Company will give immediate consideration to the modification of eligibility requirements of "Exempt" engineers in connection with the present suggestion system. In addition, the Company will continue to receive and give serious consideration to any suggestions your organization may care to make regarding engineering efficiency and utilization.

(c) If a pension plan, considered to be suitable and applicable to your group is developed, such plan will be submitted to you. Due to the complexities of the problems involved, the Company is unwilling to make further commitment on this subject at this time.

(d) We are willing to supply salary data as follows:

A new and complete "Anonymous Personnel Record" as of January 2, 1953, to be delivered as soon after that date as, with reasonable effort, it can be prepared.

Average merit raise data by classification as of January 2, 1953, and July 3, 1953, to be delivered promptly after those dates.

Average reclassification raise data by classification for the six month periods ending January 2, 1953, and July 3, 1953, to be delivered promptly after those dates.

(e) The Company is not willing to accept your

proposal as to area representatives and the use of working time in this connection.

The foregoing statements summarize the Company's position on all remaining issues that have developed in negotiations. It is the Company's sincere hope that a contract may be finalized on the basis of its proposal, at the earliest possible time.

Very truly yours,

/s/ A. F. Logan, Vice President
Industrial Relations

RESPONDENT'S EXHIBIT No. 10

[Letterhead of Seattle Professional Engineering Employees Association]

Mr. A. F. Logan December 20th, 1952
Vice President Industrial Relations
Boeing Airplane Co., Seattle 14, Wn.

Dear Mr. Logan:

This letter confirms a conversation with Mr. J. Esary of your staff during which I stated that your offer of November 20, 1952 was rejected by our membership by a vote of 1202 to 497. It is our expectations that negotiations with the Boeing Airplane Company will continue.

Very truly yours,

/s/ E. M. Gardiner, Chairman
EMG:vm Executive Committee

RESPONDENT'S EXHIBIT No. 11

[Letterhead of Boeing Airplane Company]

December 26, 1952

Seattle Professional Engineering Employees' Association, New World Life Building
Second and Cherry, Seattle 4, Washington

Gentlemen:

This will acknowledge your letter of December 20, 1952, in which you confirm the rejection, by members of your organization, of the Company's offer of November 20, 1952 for a new contract.

You state that it is your expectation that negotiations with the Company will continue, and you may be assured that the Company also intends the continuance of such negotiations to the end that a new contract may be consummated between the parties, and will extend the fullest cooperation in arranging mutually convenient meetings for this purpose.

In the meantime, the Company feels that there are compelling reasons why certain items of its offer of November 20, 1952 should be placed in effect as soon as possible. These items are:

1. Bi-weekly base salary rates and rates ranges to be converted to weekly salary rates and rate ranges by dividing the former by two; the resulting weekly rates and ranges then to be increased, effective July 1, 1952, by six percent (to the next higher cent where fractional cents result); subject to approval of the Wage Stabilization Board and Air Force. Pay dates to occur every two weeks, as in the past.

2. The method of computation of the hourly rate for scheduled overtime work of employees in the "Exempt" classifications to be revised, effective January 2, 1953, and subject to Wage Stabilization Board and Air Force approval, from the present "$3.00 an hour, or straight time, whichever rate is the greater" to time and one-half on all base rates up to and including $100 weekly, and to straight time plus $1.25 an hour on all base rates above $100 weekly.

(Explanatory note: In connection with subparagraph 1, above, overtime payments would be computed retroactively, as if the 6% increase in base salary rates had been placed in effect on July 1, 1952. Further, overtime payments to "Exempt" employees for the period from January 2, 1953 and thereafter would be computed, in accordance with the formula designated in subparagraph 2, above, on the basis of the straight time rate as increased by the 6% general increase designated in subparagraph 1, above. The action designated in subparagraphs 1 and 2 and the treatment of overtime in accordance with this explanatory note would apply to those in the bargaining unit who are in the employ of the Company at the time such action is placed in effect and also to those in the unit who return to the employ of the Company on or before July 15, 1953. The policy indicated in this explanatory note as to overtime, as well as the action contemplated by subparagraphs 1 and 2 would, of course, be subject to Wage Stabilization Board and Air Force approval.)

It is recognized that the action designated in subparagraphs 1 and 2, above, is less than you have demanded, and it is assumed that your demands, to the extent that they are not met by such action, will be among the subjects of further negotiation. The proposed action would be completely without prejudice to such further negotiations or to your position in respect of such negotiations.

However, it is felt by the Company that such action should be taken as to the employees represented by your organization as soon as the necessary governmental approvals can be obtained, for the reasons that bargaining in respect of a new contract has extended over a period of many months, without agreement having been reached; that it appears that there is no immediate possibility of reaching any mutual agreement short of granting all or substantially all of your demands—which the Company is unwilling to do; that such action is desirable and equitable in view of the effective or contemplated increases to other Company employees; and that the Company's competitive hiring position compels such action.

We would like to discuss the matter with you and suggest a meeting with your Executive Committee for this purpose at 2:00 o'clock on Monday afternoon, December 29, 1952. Please advise if the time designated for such meeting is agreeable.

Yours very truly,

/s/ A. F. Logan, Vice President
Industrial Relations

RESPONDENT'S EXHIBIT No. 12

[Letterhead of Seattle Professional Engineering Employees Association]

Mr. A. F. Logan
Industrial Relations Division
Boeing Airplane Company, Seattle 14, Washington

January 5th, 1953

Dear Mr. Logan:

This will acknowledge your letter of December 26th, 1952, concerning your statement of intention to unilaterally apply for Wage Stabilization Board and Air Force approval for changes in the base rate and overtime rate of the SPEEA classification group.

It is the intention of the SPEEA organization to file an objection to this action with the Wage Stabilization Board and an unfair labor practice charge with the National Labor Relations Board.

You may be assured that any other actions considered by us in the future to be necessary will be discussed in future meetings with your staff.

Yours very truly,

/s/ E. M. Gardiner, Chairman
SPEEA Executive Committee

EMG:vm

RESPONDENT'S EXHIBIT No. 13

[Letterhead of Boeing Airplane Company]

In reply refer to 403 January 7, 1953

Seattle Professional Engineering Employees Association
3121 Arcade Building, Seattle 1, Washington

Gentlemen:

Your letter of January 5, 1953, is acknowledged. This letter refers to the proposed action by the Company to unilaterally apply for Wage Stabilization Board and Air Force approval for changes in the base rate and overtime rate of the SPEEA classification group, and then states:

> "It is the intention of the SPEEA organization to file an objection to this action with the Wage Stabilization Board and an unfair labor practice charge with the National Labor Relations Board."

Certainly no disparagement of your organization or of the negotiations being conducted by your organization is either intended, or would result from such increases inasmuch as the proposed action is less than you have demanded and it is a fact well known to your members that you have not withdrawn your overall demands but are continuing to press them. Further, as we have stated several times previously, the proposed action is completely without prejudice to your demands and further bargaining in respect of them, and the Company is

eady to meet with you at any time for such pur-
ose.

The proposed increases are not conditioned in
ny way upon withdrawal of your demands. Thus,
t would seem that the proposed action should be
egarded as mutually advantageous to your orga-
ization, to the employees it represents, and to the
Company; would be consistent with and in no way
rejudicial to good-faith bargaining; and on the
ontrary would amount to a constructive step in
he bargaining process.

Under these circumstances, we would appreciate
a statement from you as to why our proposed ap-
lication to the Wage Stabilization Board and to
he Air Force for approval of the proposed in-
reases is considered to be objectionable and as to
why such action is apparently considered by you to
onstitute an unfair labor practice.

Very truly yours,

Boeing Airplane Company
/s/ R. A. Newell, Asst. to Vice President
Industrial Relations

RESPONDENT'S EXHIBIT No. 14

[Letterhead of Boeing Airplane Company]

Mr. E. M. Gardiner, Chairman January 29, 1953
Executive Committee, Seattle Professional Engineering Employees' Association
3121 Arcade Building, Seattle 1, Washington

Dear Mr. Gardiner:

This is in reply to your letter of January 27, 1953, in which you request a conference on the subject of the termination of Robert Pearson.

If you will telephone Mr. Esary or this office, such a conference will be arranged promptly.

Yours very truly,

/s/ A. F. Logan, Vice President
Industrial Relations

RESPONDENT'S EXHIBIT No. 15

[Letterhead of Seattle Professional Engineering Employees Association]

Mr. A. F. Logan February 6, 1953
Vice President—Industrial Relations
Boeing Aircraft Company

Dear Mr. Logan:

Your letter of January 7th, 1953 has been taken up at meetings of the Executive Committee and officers of SPEEA. It is the considered viewpoint of SPEEA that your proposal for salary increases continues to be objectionable and that any unilat-

eral action by Boeing to put them into effect at this time amounts in substance to an unfair labor practice.

It is our view that the proposed increases are so timed and planned that their effect would be to hamper SPEEA in the performance of its functions as a collective bargaining agency. Implicit in your letter is the view that the pending negotiations must be protracted, and that the increases you propose should be accepted because they can be made promptly. We take the view that the dispute as a whole can, and should be settled promptly; that the effect of any such partial adjustments in compensation would serve to delay rather than hasten completion of the pending negotiations.

Yours very truly,

/s/ E. M. Gardiner, Chairman
Executive Committee

RESPONDENT'S EXHIBIT No. 16

Mr. Charles Robert Pearson February 11, 1953
Seattle, Washington

Dear Mr. Pearson:

Seattle Professional Engineering Employees Association has requested a more particularized statement of the Company's reason for terminating your employment on January 27, 1953.

The entry on your termination slip is as follows:

"Refusal to answer questions relative to outside activities as employment agent."

In our opinion this statement summarizes the position taken by you at the conference between you and the undersigned on January 27, 1953, at which you were informed of the reason for your termination. By reason of the conference which preceded it, this entry was considered as adequate but, in response to SPEEA's request, this letter will serve to review the matter.

On January 23rd we were notified in letter form by SPEEA that that organization had started and intended to complete what SPEEA has referred to for several months as the "Manpower Availability Conference," and that it had retained an agency to arrange the interviews. With this letter was a printed copy of an invitation to this conference bearing a facsimile of your signature and indicating that you were a licensed and bonded employment agent acting as "Director Manpower Availability Service."

It was clearly apparent from this letter and invitation that SPEEA had started and intended to carry out a nation-wide solicitation of our business competitors, and others who compete with us in hiring engineers, in an effort to bring about a situation in which substantial numbers of engineers would leave the employ of this Company, for employment elsewhere.

It is obvious that even if there were an adequate supply of engineers at the present time, such a program would be against the best interests of Boeing Airplane Company. However, as you know, there is not an adequate supply of engineers at this

time; the Company is in serious need of more engineers and has been conducting an extensive nation-wide advertising campaign designed to fill this need. Thus, the invitation signed by you is part of a deliberate program which is very damaging to the Company.

For the purpose of determining whether you had authorized the use of what appeared to be your signature on the invitation and whether you were actually engaged in the program, we wired you on January 24, 1953, to arrange a conference on this subject.

You have your notes and the stenographic record of the conference on the 27th. After identifying the facsimile on the invitation as your signature, you in effect refused to answer further questions.

As your work in connection with the program is clearly against the best interests of the Company and in violation of your obligations as an employee, you were asked to elect either to give up your work as an employment agent or to leave the Company's employ. You refused to make such an election, leaving the Company no alternative but to terminate you.

It seems to us that while an employee continues at work, continues to draw salary from a company and is not on strike, it is no more than proper for that company to require that he do nothing intentionally which would have the effect of seriously damaging that company. On the other hand, it does not seem to us that an employer should be compelled to continue paying a salary to an employee

who engages in a deliberate program resulting in serious damage to the Company, whether or not his activities have been authorized or ratified by a collective bargaining organization of which he is a member.

For these reasons, your dismissal is considered proper.

Yours very truly,

A. F. Logan, Vice President
Industrial Relations

RESPONDENT'S EXHIBIT No. 17

[Letterhead of Seattle Professional Engineering Employees Association]

James D. Esary, Jr. March 6, 1953
Labor Relations Manager
Boeing Airplane Company, Seattle, Washington

Dear Sir:

This is in reply to your letter of March 2, 1953, in which you reaffirm the offer contained in your letters of November 20, 1952 and December 26, 1952. The Executive Committee of SPEEA believes that the membership has clearly indicated that this offer is unsatisfactory. We therefore again reject this offer.

The Executive Committee has further considered the request of the Company to put into effect the increases mentioned in your letter of December 26, 1952, which guaranteed no prejudice to further

bargaining. We have agreed we would poll the membership of SPEEA to learn whether they wished to accept such an interim offer, if that offer included full retroactivity on overtime as well as on base rates. Without that provision, we cannot justify the time and expense of such a poll.

It is requested that you advise the Association before Monday night, if possible, if you have any further suggestions in this matter. We would like to give a full report on this to the membership meeting that night.

/s/ J. H. Goldie, Vice Chairman
Executive Committee

RESPONDENT'S EXHIBIT No. 18

[Letterhead of Boeing Airplane Company]

In reply refer to 403-VP-100 March 12, 1953

Seattle Professional Engineering Employees Association
3121 Arcade Building, Seattle 1, Washington

Gentlemen:

This will acknowledge receipt of your letter of March 6, 1953, in which you unqualifiedly reject our offer as set forth in our letters of November 20, 1952, and December 26, 1952, and last reaffirmed in our letter of March 2, 1953. We regret that you are unwilling to accept our offer or even to join in approving such increases on an interim basis.

For reasons previously outlined to you, we feel

compelled to place such increases into effect without prejudice to further negotiations, therefore these adjustments will be placed in effect forthwith.

Very truly yours,

/s/ A. F. Logan, Vice President
Industrial Relations

RESPONDENT'S EXHIBIT No. 19

[Letterhead of Seattle Professional Engineering Employees Association]

Mr. A. F. Logan, Vice President April 8, 1953
Industrial Relations
Boeing Airplane Company, Seattle 14, Washington

Dear Mr. Logan:

This letter outlines our proposal for increases in the basic salary structure and base salary rates of Boeing employees under the jurisdiction of the Seattle Professional Engineering Employees Association and for a revised formula for computing the hourly rate for scheduled overtime work for such employees in "exempt" classification. This proposal is the same as the offer outlined in your letters dated June 27, 1952 and September 3, 1952 except that it has been modified to conform with the method used in computing the six percent rate increase presently in effect on an interim basis.

We propose that:

(a) Bi-weekly base salary rates and rate ranges be converted to weekly salary rates by dividing the

former by two; the resulting weekly rates and ranges then to be increased effective July 1, 1952, by six percent (to the next higher cent where fractional cents result), as is presently in effect on an interim basis, and

(b) The method of computation of the hourly rate for scheduled overtime work of employees in the "exempt" classifications be revised, effective July 1, 1952, from the previous "$3.00 an hour, or straight time, whichever rate is the greater" to time and one half on all base rates up to and including $100 weekly, and to straight time plus $1.25 an hour on all base rates above $100 weekly, and

(c) This proposed agreement shall have as its next anniversary date July 1, 1953, and

(d) This proposed agreement shall contain a sick leave clause substantially incorporating the pertinent portions of the existing Boeing Management Procedure No. 552 on the subject: "Sick Leave," and

(e) All other provisions of this proposed agreement shall be substantially those of the agreement in effect at the opening of the current negotiations, subject to detailed negotiations.

Very truly yours,

/s/ F. D. Frajola, Chairman
Executive Committee

FDF:vm

RESPONDENT'S EXHIBIT No. 20

403-VP-108 April 15, 1953 Mr. Esary

Mr. F. D. Frajola, Chairman, Executive Committee
Seattle Professional Engineering Employees
Association
3121 Arcade Building, Seattle 1, Washington

Dear Mr. Frajola:

This is in reply to your letter of April 8, 1953, in which you make certain proposals.

The 6% increase proposed in subparagraph (a) of your letter subject to the limitations set forth in the explanatory note contained in our letter to you of December 26, 1952, already is in effect.

With reference to your subparagraph (b), the method of computation of the hourly rate for scheduled overtime work of employees in the "exempt" classifications has been revised, as of January 2, 1953, but the Company is unwilling further to extend retroactively the effective date of such revised method.

The proposed anniversary date for a new contract of July 1, 1953, is unacceptable as we do not believe any constructive purpose would be served by writing a contract covering a period of only sixty days.

The Company, in a letter to your organization dated September 3, 1952, expressed its willingness to write into an agreement with SPEEA a sick leave clause substantially incorporating the pertinent portions of the existing Management Pro-

cedure No. 552 on the subject: "Sick Leave." We still are agreeable to such a clause.

The Company is ready to continue negotiations for a new contract and meet at all reasonable times with your organization for that purpose. As to your proposal (subparagraph e), the other provisions of any new contract will be determined by such negotiations.

Yours very truly,

A. F. Logan, Vice President
Industrial Relations

RESPONDENT'S EXHIBIT No. 21

[Letterhead of Boeing Airplane Company]

In reply refer to 405
Mr. F. D. Frajola May 6, 1953
Seattle Professional Engineering Employees Association
3121 Arcade Building, Seattle, Washington

Dear Mr. Frajola:

It has been some time since there has been a meeting between the Company and SPEEA negotiating committees and it is the purpose of this letter to suggest that such a meeting be arranged in the near fuuture at some mutually convenient time. Although we know of nothing that would indicate any recent change in the respective positions of the parties, it would seem, nevertheless, that such a meeting might be advisable, particularly in view of the fact that the personnel of your committee

has changed and there has been little discussion of the contract issues with the new committee. Moreover, there are several points in connection with the drafting of a new contract between the parties which are not thought to be of a controversial nature, but which must be worked out before any such new contract can be finalized.

A discussion of these points and the adoption of a plan for working out the related details might expedite the execution of a new contract at such time as the parties are able to resolve the more controversial issues.

If you also feel that such a meeting is desirable, please advise us so that a convenient time can be arranged.

Very truly yours,

/s/ Jas. D. Esary, Jr.,
JDE:bml Labor Relations Manager

RESPONDENT'S EXHIBIT No. 22

Notice

You will note that the enclosed check represents an increase in your pay of 6% as of March 13, 1953. On April 23, 1953, you will receive payment of the 6% increase in your base pay for the period July 1, 1952, through March 12, 1953, as well as any amount arising from an increase in the overtime compensation rate for "Exempt" classifications effective January 2, 1953. The new overtime rate for SPEEA "Exempt" employees is straight time

plus $1.25 an hour where the base salary is above $100 a week, and time and one-half on all salaries of $100 a week or less. The former rate was straight time or $3.00 an hour whichever was the greater.

These increases have been placed into effect without a new contract having been signed with your collective bargaining agent, SPEEA. This is less than the increase requested during the course of current negotiations, and is being placed into effect by the Company without prejudice in any way to the pending negotiations between the Company and SPEEA. Prior to placing these increases into effect SPEEA was advised and consulted, and SPEEA objected to the Company placing these increases into effect. The Company is hopeful of and looking forward to the execution of a collective bargaining agreement with SPEEA which will be mutually agreeable to the parties.

Boeing Airplane Company

RESPONDENT'S EXHIBIT No. 23

Copy Attachment No. 2

Headquarters, Eastern Air Procurement District,
67 Broad Street, New York 4, New York

Aircraft Industries Assoc. 26 April 1951
15th & H St., N. W., Washington 5, D. C.

Re: Manpower Controls and Hiring Practices.

Gentlemen:

Mandatory manpower controls are not now in

effect, but the National Manpower Mobilization policy as promulgated by the President on 17 January 1951 provides "Manpower controls will be used when and to the extent needed to assure successful execution of the mobilization program."

In order to maintain the present manpower policy which provides that any cooperative actions pertaining to recruitment and hiring of workers for the production of Government contracts be on a voluntary basis, it is necessary for Industry to avoid participating in any disruptive hiring practices. The hiring practices considered most disruptive are:

1. Hiring workers from outside the community before full use is made of locally qualified and available manpower.

2. Pirating workers from other essential activities.

3. Advertising indiscriminately for manpower.

4. Establishing specifications for workers which are higher than the minimum requirements for the work.

5. Hiring a greater number of workers than needed or than can be readily absorbed within a reasonable period of time.

The Aircraft Industry is urged not to participate in any of the disruptive practices mentioned above.

Very truly yours,

/s/ Arthur Thomas, Brigadier General,
USAF, Commanding

JGB/mfh

CERTIFICATE

This is to certify that the attached proceedings before the National Labor Relations Board for the 19th Region in the matter of Boeing Airplane Company, Seattle Division were had as therein appears, and that this is the original transcript thereof for the files of the Board.

ACME REPORTING COMPANY
Official Reporters
By BERNICE M. JACKSON REPORTING CO./NL
Field Reporter